

104
OVERSIGHT OF THE ENVIRONMENTAL PROTECTION AGENCY'S PROGRESS IN REDUCING UNNECESSARY PAPERWORK BURDENS UPON SMALL BUSINESS

Y 4. SM 1:104-80

Oversight of the Environmental Prot... ,ING

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT PROGRAMS
OF THE
COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

WASHINGTON, DC, MAY 30, 1996

Printed for the use of the Committee on Small Business

Serial No. 104-80



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OVERSIGHT OF THE ENVIRONMENTAL PROTECTION AGENCY'S PROGRESS IN REDUCING UNNECESSARY PAPERWORK BURDENS UPON SMALL BUSINESS

THURSDAY, MAY 30, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT PROGRAMS,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room 2359, Rayburn House Office Building, Hon. Peter G. Torkildsen (Chairman of the Subcommittee) presiding.

Chairman TORKILDSEN. The hearing of the Small Business Subcommittee on Government Programs will come to order. The hearing today is specifically designed for oversight of the Environmental Protection Agency and its progress in reducing paperwork burdens, as well as compliance with the President's recent order to review all regulations and also comply with Paperwork Reduction Act of 1995.

Our witness today is Mr. Thomas Kelly, who is representing the Environmental Protection Agency.

I think it is important to note a few things before we proceed with testimony. Number one, protecting the environment is one the most important responsibilities that the Congress has. The Federal Government should work toward a safer, cleaner and healthier environment. Several pieces of legislation come to mind to support this. First, the Clean Water Act, for example, is a critical component in the continuing efforts to clean our rivers, lakes, and harbors and make them swimmable and fishable. A clean environment benefits everyone and Congress must continue its efforts to ensure that our environment will be safe for future generations.

The 1973 Endangered Species Act is another fine example of comprehensive attempt to protect various species and their habitats. Either endangered or threatened. I support reauthorization of a strong Endangered Species Act, and as a final example, the Magnuson Act to protect marine habitats and ensure that fish stocks will be plentiful for years to come.

Specifically, reauthorization of the act requires Federal Agencies to consult with the Secretary of Commerce before entering into any project which may damage essential fishery habitat. This legislation passed the House by an overwhelming margin of 388 to 37.

It is important for the Federal Government to streamline the regulatory process allowing greater public input into that process.

The emphasis should not be on paper, but on protecting our environment.

I asked Mr. Kelly today to comment on three general areas: First, President Clinton's March 4, 1996 directive; second, the burden reduction goals of the newly enacted Paperwork Reduction Act of 1995, especially EPA's pledge to reduce the burden by 25 percent; and third, EPA's response to the recommendations adopted by the delegates to the White House Conference on Small Business regarding regulatory and paperwork burdens.

We are all interested in eliminating barriers and enabling small business to grow and create jobs.

Our discussion here today should contribute to the overall regulatory relief for small business while continuing to protect our environment.

With that, I would conclude my statement; if and when we are joined by a member of the minority party, they will be given a chance to make any opening statement they wish.

[Chairman Torkildsen's statement may be found in the appendix.]

Chairman TORKILDSEN. I would like to ask our witness, Mr. Kelly, who is not only distinguished enough to be working for the EPA but is an alumnus of St. John's Prep, a first-rate school—I would like to ask Mr. Kelly for his comments at this time.

TESTIMONY OF THOMAS E. KELLY, DIRECTOR, OFFICE OF REGULATION MANAGEMENT AND INFORMATION, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. KELLY. Thank you, Mr. Chairman. It is a distinct pleasure to be here and renew the old school tie. As you know, I grew up as a resident in your current district, so it is a special pleasure to come here personally and also professionally to represent my Agency.

You may know that I am an 18-year Civil Service employee of the Environmental Protection Agency, and I currently run the Office of Regulatory Management and Information. In that respect, I have responsibility for information collection portions of the Paperwork Reduction Act, as well as for managing the regulatory development process in our Agency under the Administrative Procedure Act and other statutes, as well as Executive Order 12866.

I can tell you that in my 18 years in the Agency I have never seen such a genuine and thorough spirit of cooperation with the public as I see right now. I think this is something that has been building over the past several years, and I think that the current leadership has brought it to the highest levels of expression. Part of the reason for that is, as you said in your opening statement—and I appreciate hearing your support for environmental initiatives—most members of the public do pledge very strong support for the environment—75 to 80 percent in almost any poll you mention. It is important we do the right thing, and it is equally important we do the thing right. By that, I mean that we want to reduce the burden, which I define to be unnecessary work, on the public when they comply with regulations.

We get feedback on small business in a variety of ways. One of the most conspicuous means is the White House Conference on

Small Business. I must tell you, it is difficult to stay in touch with "small business" because there is no single entity that we can communicate with. "Small business" is an aggregate term that stands for hundreds of thousands of diverse, diffuse activities throughout the country in which people are making money by providing goods and services. The only way to stay in touch is to get out there and be with the people who participate in small business. Despite the difficulties that we have had over the past year without budget, our leadership at EPA continued to be on the road meeting and dealing with small business representatives everywhere.

I have three points to talk about today. One is what we are doing in EPA to reduce burdens on small business. Another is what we are trying to do at EPA to help small business understand and comply with environmental regulations. The third is what we are doing to reach out to small business to include them as legitimate advisers and stakeholders in the protection of the environment we all share. Let me start with the very first and that is to reduce burdens on small business.

I am responsible for paperwork management in EPA. I think, from your opening statement, you will probably agree that environmental information in itself is a good and necessary thing. Suppose we think of the alternative, that is, a situation in which, let's suppose, we have a gas station that is being very circumspect about reducing toxic air emission and managing underground tanks. He has a competitor who may not be doing the same job or making the same investment.

What do we do about that? We ask each one to self-monitor and report information to the State or EPA to show both the public and his competitor in a credible way that he is complying.

What we would have to do in the absence of that information? We would need an army of inspectors running around the country to check on people on the assumption that they were not doing it properly on their own. We need to know, one way or another, that regulated entities are paying their share to protect the environment. Otherwise, we would have chaos in our competitive system.

So, I believe environmental information, in and of itself, is a good thing. What we don't want is too much of a good thing. We want to make sure that what information we do require is the minimum necessary, and the way we ask for it and the way the people are allowed to supply it are efficient and reasonable.

In that respect, we set a target for ourselves earlier this year, the Administrator of EPA did, to reduce the burden put on the public by 25 percent. That translates to a target of 25 million hours if we take the fact that we were asking for about 100 hours of effort on the baseline we set as of January 1, 1995.

Chairman TORKILDSEN. Mr. Kelly, if I could interrupt and apologize for that, it sounds like you are about to enter into a substantive area, and as you notice from the bells ringing, the House has a vote, so I will have to recess the hearing briefly and go vote; and when I return, the hearing will conclude. So, it should be just about a 10-minute recess or so.

Mr. KELLY. That will be fine.

Chairman TORKILDSEN. The hearing stands in recess.

[Recess.]

Chairman **TORKILDSEN**. The hearing will continue. At this point, I would like to ask the Ranking Member of the Subcommittee, Mr. **Poshard**, if he has any statement he would like to make.

Mr. **POSHARD**. Mr. Chairman, I would have an opening statement to submit for the record and ask unanimous consent to add additional remarks.

Chairman **TORKILDSEN**. Without objection, so ordered. We will continue with Mr. Kelly.

[Mr. Poshard's statement may be found in the appendix.]

Mr. **KELLY**. Thank you, Mr. Chairman, Mr. Poshard.

In the interest of time, I want to touch on just some of the points that I might have made at more length, because I know you probably will have some questions. As I said—I will repeat it for the benefit of Mr. Poshard—we have, I think, an excellent record, and it is an increasingly better record of supporting small business.

Let me just mention that the Administrator did target a 25 percent burden reduction. We have translated that into 25 million hours and we have been working on that steadily since the target was set about a year ago. We are currently looking at close to 23 million hours that we have either already eliminated, or we are pretty sure we know how we are going to do it. I would say that we are certainly closing in on our goal of 25 million hours, and I am very hopeful that we will make it.

I will give you examples of what we are doing in that area later on if that is what you are interested in.

In addition to eliminating the burden that currently exists, I would like to point out that this spirit has affected everything we do. For example, there is a great deal of potential that was in regulatory proposals. That means, when the Agency staff was trying to figure out how we were going to implement something, they thought this was the information we were going to need. Recently we have avoided imposing 6 to 7 million hours of burden between proposal and issuing final regulations just by listening to what the public had to tell us.

I want to underline that. This is not just a one-time exercise dedicated to reducing burden on the public as measured by the Information Collection Request's on a certain date. This is a commitment to minimize the paperwork burden on the public henceforth.

Another thing I wanted to mention to you—especially you, Mr. Chairman, because I know you were the author of the Paperwork Elimination Act that passed the House unanimously recently—we are committed to the use of electronic information, and we have been working for the last few years to develop prototypes for Electronic Data Interchange as a mainstream method of collecting environmental information. We actually have one program up and running, the Reformulated Gasoline Program. Very shortly, over the summer, we will move into the Discharge Monitoring Report, which is the biggest single information burden that we have, and we will soon be accepting data electronically in the Safe Drinking Water Data Collection and our Hazardous Waste Manifest. All of these will be subject to Electronic Data Interchange in the relatively near future, and we are very proud of that.

The second area I wanted to touch on is what we are doing to help small business comply with what we know to be very large en-

vironmental requirements that, for many reasons, tend to be quite technical and sometimes bewildering. We have set up Small Business Compliance Centers. Our Office of Enforcement and Compliance is not just dedicated to enforcement but, also to compliance. They have reached out now to the automotive service industry, to printing plants, to metal finishers and small farms. These centers provide small business with plain-English explanations of what they have to do to comply, and give them expert assistance on-site as to what kind of compliance problems they might have and what they can do to comply. We have produced sector notebooks for 18 separate industries, many of them small businesses, that give people a how-to manual on how to do pollution prevention.

Carrying out Section 507 of the Clean Air Act we have compliance assistance programs in every State, including Massachusetts and Illinois, and our new policy, of which we are very proud, has just been issued on small business compliance. What this does—and I know the enforcement people will probably tear me up for putting it this way—but it really cuts some slack for small businesses who find themselves seriously attempting to comply—and most of them want to—but who are having trouble. If a small business reaches out and asks for help from any of these compliance assistance centers, or if they have a self-audit done in order to find out for themselves what they can do better to comply and that turns up a violation, EPA is willing to forgive that violation. This presumes it is a first-time violation—this is not an inveterate violator—and that the business makes a good-faith effort to correct that violation within 6 months.

We think that policy is a clear expression of EPA's interest and willingness to help those who want to comply find the means to do it and to give them sufficient incentive to do that.

Finally, the last point I wanted to touch on was what we are doing to reach out to small business; and it is a great deal, Mr. Chairman. Every regulatory working group that is working on a regulation that might affect small businesses holding focus groups, hearings and meetings, many of them specifically for small businesses. Our interpretation of the Regulatory Flexibility Act goes way beyond what the act requires. If you know the Regulatory Flexibility Act, it requires, if there is a significant impact on a substantial number of small entities, that we look at what we can do to provide some flexibility.

We have been considering any impact on any number of small entities sufficient to cause us, whether formally or informally, to reach out to small business and work with them to provide flexibility in our requirements. That is a commitment we maintain; whether formally or informally, we will continue to provide those kinds of flexible compliance opportunities for small business even as we are now implementing the Small Business Regulatory Enforcement Fairness Act, which was just passed.

We post our rules on the Internet, our home page provides lots of information. Last night I was looking at the EnviroSense home page internet site that gives all kinds of suggestions on pollution prevention, and this is available relatively easily to small businesses. We are reaching out to them as long as they are interested in reaching in to us.

You are familiar with the Common Sense Initiative which has EPA employees sitting down with environmentalists, business people, other advocacy groups and trying to make sense of the combined impact of environmental regulations as they impinge on a particular business sector. Two of those sectors that we are working with are small businesses, metal finishing and printing.

Finally, I wouldn't want to speak here today without mentioning the work of our Small Business—Karen Brown, who is with us today. Karen runs an office that handles 20,000 requests a year from small business. What does EPA think about this? Who can I go to find out about that? I think I have a compliance problem; what can I do about it? I don't want to get hammered here, but is there somewhere I can go to find out what I can do?

Karen's people, as I said, managed 20,000 requests for information like that first year, and what is better is, now she has an array of resources that she can use to direct people to find that kind of help.

I appreciate the opportunity to present this report to you today. I am very proud of our Agency and what we are doing.

[Mr. Kelly's statement may be found in the appendix.]

Chairman TORKILDSEN. Thank you very much for your testimony, Mr. Kelly. I will start off with just a few questions.

I appreciate your recognizing the legislation recently passed by the House, the Paperwork Elimination Act, and am glad the EPA has taken the initiative before the passage of that act to become computer user friendly. The EPA is one of the Federal Agencies that has extensive reporting requirements, as does the Department of Labor, IRS, and others. It is important.

Have you ever done any breakdown on what percentage of the regulatory paperwork burden is reporting versus actual record keeping? I notice that you mentioned both are part of your target for your total reduction, but do you have a breakdown on that.

Mr. KELLY. I would ask to provide that for the record.

I can give you a general sense. It is mostly monitoring and record keeping. A lot of the burden that we measure is just managing the information on-site. Reporting is a relatively small percentage of the burden because most of the expense most of the time—for example, in Clean Water Act management—is actually going out and getting the monitoring information, sending it to the laboratory, and having it analyzed. That is all very time consuming. Putting the final report together and sending it in to the State, which is where it ordinarily goes, is just the last step in the process.

[The information may be found in the appendix.]

Chairman TORKILDSEN. You also made mention of the actual Executive order from March 4 of this year. How is the EPA doing with that? Has the EPA been able to review all of its regulations already, or is it still in process, or how is it going right now?

Mr. KELLY. You are referring to President Clinton's instruction to the Agencies of March 4 of last year?

Chairman TORKILDSEN. That is correct.

Mr. KELLY. We have reviewed all of our regulations line by line and page by page and we have committed to remove, I believe it is 1,400 pages from the Code of Federal Regulations, and we have

so far completed work on about 1,200 of those pages. I am speaking in round numbers.

Chairman TORKILDSEN. Is 1,400—out the total number of how many pages?

Mr. KELLY. About 14,000.

Chairman TORKILDSEN. About 14,000.

Mr. Poshard, any questions on this?

Mr. POSHARD. Thank you, Mr. Chairman.

Mr. Kelly, let me first of all thank the Agency particularly for the new policy of waiving penalties for first-time violations that are noncriminal and not detrimental to public health. That is a tremendous step in the right direction for our small business people, and I know personally several small businesses in my area that have utilized that, have found that to be a common-sense approach to getting them on the right track. Because a lot of the first-time violations by small businesses are done out of a sense of not knowing, as you understand, and I think recognizing that and kind of getting people on the right track without huge fines or penalties has been a very positive development; and I wanted to thank the Agency for approach.

The second thing that I wanted to ask you is just where are we at this point in time with this underground storage tank issue, if you can speak to that with any specificity? That is a huge issue with small business people in my district—I assume, Mr. Chairman, in yours and across the country. Where are we with that? Have we sort of left that up to the States now? I have kind of lost track the last few months.

Mr. KELLY. I wish I could answer you directly, sir. I am not an expert in that area of our programs. If you will indulge me, I would like to get back to you.

Mr. POSHARD. I appreciate that. I am not trying to put you on the spot. I would like to know what progress we have made. It has been a particularly sticky wicket with a lot of people in my area that have tried to buy commercial property and found that there was, at some point in time, one of these tanks on the ground, and now they assume certain liability. I hope we are making progress and moving forward.

Can you give me some sort of status report? I would just like to know where we are with that.

Let me ask you another question.

Chairman TORKILDSEN. If you could provide that for the record I think we would all appreciate that.

Mr. KELLY. I will do that.

[The information may be found in the appendix.]

Mr. POSHARD. Thank you, Mr. Chairman.

Just with respect to your written testimony here, I know you are making an attempt to reach out to get feedback from the small businesses with respect to future policy decisions and so on. How is that going?

I mean, small business people are a pretty tough group, in my judgment, it is sometimes hard to convince them that there is a balance here between protecting the environment and not overreaching.

How has your feedback been going? Are you achieving some sort of balance there with the community? What is your sense of it at this time?

Mr. KELLY. My sense of it is, I think things are going reasonably well. I think you put your finger on it, that this is the sort of thing where everybody has an issue, and it is a personal issue because people run their own small businesses, and their issues are always very personal about their business.

In an Agency like EPA, really the ideal way would be to be able to get out there and talk to each business owner about exactly what problems he or she is having in managing their business; and obviously that is not possible.

However, the White House Conference on Small Business, which was held late last year was a terrific forum to allow small business representatives to come from all over the country. They elected themselves through regional and State small business conferences to come in and basically give the Federal Agencies hell over the issues they felt the strongest about.

We in EPA got a tremendous amount of feedback from that, and we used the results of that conference to target a number of the changes that were made. As a matter of fact, the policy that you just referenced is a change that the small businesses requested in the context of that small business conference.

So, I think the issue really is, how do we communicate with a group as diverse and diffuse as small business; and I don't know that there is a simple answer to this. I can tell you, through the offices of Karen Brown, EPA's Small Business Ombudsman, our Deputy Administrator Fred Hansen meets several times a year with the trade group representatives of small business, and those are meetings in which those folks come and say, Mr. Hansen—they call him Fred—here is what we are worried about; can you help us with this? And the next time they come in there is an answer.

I cannot say, we have got the problems licked here. Clearly there is an awful lot of work left to do. But I think the big thing is that our Agency is firmly committed. I am not talking about simply the political leadership; I am saying as a civil servant that we are all committed to working with small business because we know that 80 percent of the public money supports environmental protection, but they won't necessarily support the way we do it unless we do it the way they want it done.

Mr. POSHARD. I can appreciate their concern about that. I think, at least perception-wise in the minds of a lot of small business people, there has been more than is necessary an adversarial approach in the past, and I am grateful to see an outreach and an informational, sharing type of arrangement going on at this point in time; and I thank you for that.

Mr. Chairman, if I may be permitted at this point in time to introduce a new member in our caucus to the Subcommittee.

Chairman TORKILDSEN. Please do, Mr. Poshard.

Mr. POSHARD. Thank you.

Mr. Chairman, it is my pleasure as Ranking Member to introduce to the Subcommittee Congresswoman Juanita Millender-McDonald. She is just joining us as the newest member of this Sub-

committee. She defeated seven opponents to get here, which makes her a pretty viable person.

Before election to the U.S. House of Representatives, Juanita Millender-McDonald served in the California State Assembly; she was first elected in November, 1992, which was an unprecedented year for women in politics. She has been a proven leader there in the California legislature, having introduced over 100 bills in her first 3 years.

She began her professional career as a teacher. She has been an editor and a writer, and is presently working on a dual masters/doctorate degree in public administration at the University of Southern California.

I could go on and on. There is no need to do that. I would just like to introduce her to the Subcommittee and welcome her here.

Mrs. MILLENDER-MCDONALD. Thank you.

Thank you so much, Mr. Chairman.

Chairman TORKILDSEN. Thank you, Congresswoman. I also extend a welcome to you. I believe you may be—are you the newest Member of Congress at the moment?

Mrs. MILLENDER-MCDONALD. I just came from the floor. As I congratulated the newest Member, I told him, I will tell him everything I know.

Chairman TORKILDSEN. I extend a welcome and thank you for participating in these hearings. Would you like to ask the witness any questions?

Mrs. MILLENDER-MCDONALD. I would like to ask one question, Mr. Chairman, if I may. I would like to thank the Ranking Member for his introductions and for graciously accepting me on this Subcommittee. It will be a pleasure to work with you.

Mr. Kelly, I know you have an environmental audit you have to come forth with, I suppose, in this new information age of high technology. I wonder if you have the capability at EPA to provide such an audit on the Internet at the World Wide Web?

Mr. KELLY. I want to make sure that I understand your question. When I think of environmental auditing, I think about a business hiring a neutral third party to come in and conduct that kind of audit.

The answer is that we have compliance guides that are being developed for various industries. For example, one of the most recent is a compliance guide for the dry-cleaning industry, which is primarily small business. These guides will be available on paper. As a matter of fact, that one is being written not only in English but Korean because of the needs of the people in that industry.

It is our intent as we get these materials up and available through the Internet. There are some technical problems with graphics and so on. It is no help to give somebody access to a document if it takes an hour-and-a-half to load when it comes across on the Internet.

So, clearly we have those kinds of problems to overcome, but our commitment is to make all of these available, whether by paper or electronically, and put them in the hands of people who can use them.

Mrs. MILLENDER-MCDONALD. Given the fact that small businesses are really the engine that drives the economy, with ref-

erence to the jobs they create, are you concerned about and has there been a lot of mention to you with reference to regulatory reductions, I guess you might say, with reference to small businesses?

In my district, that is the cry that I hear. I was just wondering what—in any way have you addressed that concern?

Mr. KELLY. Yes, Congressman—Congresswoman.

Mrs. MILLENDER-MCDONALD. That is OK. You are not the only one. We are all congressmen.

Mr. KELLY. I was explaining that one the things we have done with our implementation of the Regulatory Flexibility Act, which instructs us to look at the specific needs of small businesses, is that we need the act as being far more far-reaching than it actually is in the text. We are required to look at regulatory alternatives, compliance alternatives for any regulations when there is a significant impact on a substantial number of small entities.

We have been saying and behaving on the premise that any impact on an individual entity, and any number of them, we will consider significant and substantial under that act. So, we now routinely review all of our regulations as we are writing them to see whether or not we can write this in such a way that small business has an easier way or better way to comply.

Many times we provide later compliance dates. Another thing we do is, if it is a reporting type of regulation, we set the threshold for reporting at such a level that small businesses can exempt themselves. That is something we just did with the Toxic Relief Inventory as a matter of fact.

People in small businesses that use chemicals of concern can now certify that they do not employ amounts of chemicals above a certain threshold. Then they have a 2-page report to fill out instead of a more complicated 9-page report. Flexibility takes different forms and there is no way to prescribe it for all situations.

But in answer to the tenor of your question, yes, we are working every day to recognize what small business is going through, and at the same time, to recall that our first responsibility is to protect the environment. We can't simply say, well, forget about it, you don't have to comply with this, because the chemicals they are using are dangerous.

If we must put restrictions on them, we try to make sure that they are meaningful and reasonable.

Mrs. MILLENDER-MCDONALD. Let me just commend them. I am told that EPA has through the year 2001 to reduce paper, and I hear that you are very vigorously going to—I guess meeting that and really exceeding that in a short time. So, I commend you for that.

Thank you, Mr. Chairman.

Chairman TORKILDSEN. One specific area in the series of White House recommendations was about the Superfund and dealing with the strict retroactive liability just to walk you through cases—not too uncommon, I think. A small, let's say, convenience store owner may find that they bought the convenience store 20 years ago; however, 40 years ago it used to be a dry-cleaning store. Whoever owned it 40 years ago disposed of dry-cleaning solvent in the back-

yard, and they find out now that they are liable for a costly clean-up, even though they were not polluting.

Is there any focus at all at the EPA to make a distinction between those entities who are responsible because they actually did the polluting versus those in small businesses that are held responsible solely because the property was polluted and they didn't know it was polluted when they bought it.

Mr. KELLY. That is a tough dilemma and the question literally is, is there any thought or concern being given to that kind of dilemma.

Chairman TORKILDSEN. Addressing that concern mentioned at the White House Conference on Small Business—

Mr. KELLY. Absolutely, yes. I cannot report to you today that there is an answer that we have for that dilemma, although what I would like to do is confer with people who are really knowledgeable and work with Superfund every day and get back to you formally.

But I know that our Agency has looked at the issue, for example, of lenders who find themselves in a situation of liability in circumstances just like that, and our Agency is seeking policy and/or legislative change that would minimize that type of liability.

The other thing that our Agency is promoting would be legislative change that would consider de minimis—or de micromis, if you can accept that term—participation in a Superfund site. There are lots of small entities that may have contributed a relatively very small amount of pollution to a site that later becomes a major problem. Our Agency would very much favor eliminating those small participants from the entire process of Superfund cleanup.

The issue you present where there is a single site and a fairly clear-cut transition of ownership and you have a small business that now owns the land is really a tough one because this principle of strict and retroactive liability is one that is designed to make certain that the public at large is not presented the bill for clean-ups where there have been problems before. We do have policies regarding "orphan shares," so to speak, where the people who actually caused the pollution are no longer available. I think there is a great deal of sympathy in our Agency for the situation that you presented, and I will get back to you, if I may, with some specific comment on how we are addressing it.

Chairman TORKILDSEN. I would appreciate that. I think many members would, because it is an example that I think has happened over and over again. Literally, people are losing their whole life's savings when they find out somebody, years before they even bought the property, had disposed of some toxic chemical or something; and all of a sudden they lose everything they have, because the law doesn't make what I think is a very necessary distinction there.

I think we would appreciate it for the record.

[The information may be found in the appendix.]

Chairman TORKILDSEN. Congresswoman, do you have any additional comments for the record?

Mr. KELLY. Mr. Chairman, may I ask that my written statement will be included in the record.

Chairman TORKILDSEN. If there is no objection, Mr. Kelly's written statement will be included in its entirety. Members can add their own statements, or submit questions, and I ask the witness to respond to those.

So, the record will remain open until you can respond to that—not just questions today, but future questions.

[The information may be found in the appendix.]

Chairman TORKILDSEN. With no objection, so ordered. With that, the hearing is adjourned.

[Whereupon, at 11 a.m., the Subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

PETER G. TORKILDSEN, MASSACHUSETTS
CHAIRMAN

GLENN POSHARD, ILLINOIS
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
 104th Congress
Committee on Small Business
 Subcommittee on Government Programs
 B-103 Raghorn House Office Building
 Washington, DC 20515

Statement
 of
Congressman Peter G. Torkildsen
Chairman
Government Programs Subcommittee
House Committee on Small Business

Oversight Hearing
Environmental Protection Agency's
Progress in Reducing Unnecessary Paperwork Burdens
Upon Small Business

May 30, 1996

Good Morning and welcome to our guest. This hearing is the first in a series of three the subcommittee will be holding this summer to evaluate what agencies are doing to meet the President's March 4, 1996 directive to agency heads to read every page of their regulations and make regulatory reform a priority. In addition, by making this issue a priority, we are many steps closer to meeting the recommendations

of last June's White House Conference on Small Business and addressing the burden reduction goals of the 1995 Paperwork Reduction Act.

It is important, as our witness today is representing the Environmental Protection Agency, to discuss protection of our environment as well as our efforts to reduce the paperwork burdens on small business.

Protecting the environment is one of the most important responsibilities Congress has. The government should work toward a safer, cleaner and healthier environment. Several pieces of legislation come to mind in support of this. First, The Clean Water Act, for example, is a critical component in the continuing efforts to clean our rivers, lakes, and harbors. A clean environment benefits everyone, and Congress must continue its efforts to ensure that our environment will be safe for future generations. The 1973 Endangered Species Act is another fine example of a comprehensive attempt to protect various species and their habitats. As of January, 1992, 1,209 species of animals and plants have been listed as either endangered or threatened.

I support reauthorization of a strong Endangered Species Act. And as a final example, the Magnuson Act, which would protect marine habitats to ensure that fish stocks will be plentiful for years to come. Specifically, reauthorization of the Act requires Federal agencies to consult with the Secretary of Commerce before entering into any project which may damage essential fishery habitat. This legislation recently passed the House by an overwhelming margin of 388 to 37.

It is important for the federal government to streamline the regulatory process and allow greater public input into that process. The emphasis should not be on piling up paper, but on protecting the environment.

I have asked our witness today to provide the committee with a progress report on EPA's efforts to respond to [1] President Clinton's March 4, 1996 directive; [2] the burden reduction goals of the newly enacted Paperwork Reduction Act of 1995, especially EPA's pledge to reduce the burden by 25 percent (25%); and [3] EPA's response to the recommendations adopted by the delegates to the White House Conference on Small Business regarding regulatory and paperwork

burdens.

We are all interested in eliminating barriers and enabling small businesses to grow and create jobs.

Our discussion here today should contribute to the overall objective of regulatory relief for small business while continuing to protect our environment. I also believe that with continued work in this area that there can be something to celebrate in the long-run.

With that I would like to yield to the ranking minority member, Congressman Poshard, for any statement he wishes to make.

COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON GOVERNMENT PROGRAMS

HEARING ON EPA COMPLIANCE WITH THE PAPERWORK REDUCTION ACT

Opening Statement of Congressman Glenn Poshard

May 30, 1996

Mr. Chairman, Thank you for holding this hearing today. As everyone on the Committee knows, you have been out in front on the issue of paperwork reduction, and your efforts are much appreciated. I look forward to hearing about any new developments in how the Environmental Protection Agency (EPA) is striving to reach their goals in this area.

I was satisfied with the description of the progress that the EPA has made in regard to paperwork reduction that was given to the full Committee on March 7 of this year. A 25% reduction in this burden will certainly benefit the small businesses of this country. However, I did note the concerns of witnesses in regard to the sometimes imposing view of the EPA. Again, I will stress that I believe the EPA is making a good faith effort to become more user friendly for small businesses. I commend them for their hard work.

Mr. Chairman, thank you again for your attention to these matters. I would also like to thank Mr. Kelly, our lone witness for these proceedings, for his time and expertise.

**Testimony of
Thomas E. Kelly, Director,
Office of Regulation Management and Information
United States Environmental Protection Agency
Before the Committee on Small Business
Subcommittee on Government Programs
United States House of Representatives
May 30, 1996**

Good morning Mr. Chairman and members of the Subcommittee on Government Programs. I am pleased to be here today to tell you about EPA's efforts to reinvent environmental protection and to assist small businesses in finding simple, efficient ways to comply with environmental regulations.

This is a time of enormous change at EPA. Under the leadership of President Clinton and Administrator Browner, EPA is fundamentally changing the way it protects public health and the environment for all Americans. EPA is working increasingly as a partner with business, state and local government, and all citizens to find environmental solutions that cost less but get better environmental results. In 1995, the White House sponsored a Conference on Small Business, and EPA took part. The recommendations coming out of the Conference have been particularly helpful in guiding our reinvention priorities. An important set of changes going on at EPA address the concerns and needs of small business. I would like to share some information about those changes today.

First let me say that EPA is now, and has been for some time, committed to addressing the concerns of small business while maintaining strong protection for public health and the environment. Despite the many restrictions we have experienced

at EPA during the budget uncertainties of the past year, many EPA officials have continued to reach out across country to discuss public health and environmental concerns with numerous small business people. It is clear that most small business owners share the concerns of all Americans about protecting public health and environmental quality. Small business owners want safe and clean communities in which to live and work and raise their children, and they want our precious natural resources to be preserved for future generations. Although environmental protection does not come without cost, most small business owners would not appear to support a rollback of environmental standards any more than would most citizens.

An Overview of EPA's New Approach for Working With Small Business

Reinventing how EPA deals with small business involves three kinds of activities. First, EPA seeks to reduce the burden that environmental programs place on small business while guaranteeing the protections to public health and the environment that EPA envisions and the regulations require. The challenge is to lessen the burden but not the protections they bring. In our twenty-five years of experience in providing public health and environmental protection we have learned that some of our regulations are unnecessarily burdensome and we have learned more efficient ways of achieving environmental results. We are putting those lessons to use.

Second, we recognize that most Americans, including small business people, are good citizens who want to comply with environmental requirements. The truth is that the requirements are complicated and especially difficult for smaller businesses to understand. In the past EPA enforced the requirements but left it to regulated entities to look elsewhere for assistance in meeting requirements. While that works reasonably well for larger companies with legal and technical experts devoted to environmental compliance, it leaves small businesses in need of help.

One of the first changes that Administrator Browner made at EPA was to reorganize the Office of Enforcement to add a strong compliance assistance function. EPA now realizes that we have a role in assisting businesses, and especially small businesses, in complying with requirements. EPA's goal is public health and environmental protection through compliance.

And third, EPA is reaching out to small business to a far greater extent than at any other time in our history. Today we do not write regulations or make policy that affect small businesses without first talking to small business people and without carefully evaluating the economic impacts of those actions. We want to make sure that any burden we impose is justified by better protection to human health and the environment. We are making special efforts to include small businesses in new programs and initiatives from which they might benefit. I would like to talk about each of these three points in greater detail.

Please keep in mind that most of EPA's programs are delegated to States. In fact, the vast majority of environmental programs are operated by state governments. Thus, EPA usually does not touch small business directly, except by setting national standards which become part of state programs. When EPA reduces the burden imposed by its regulations or establishes enforcement policies to give small business flexibility, we are providing a model. While we can not require states to follow our lead in removing burdens or providing compliance assistance, we do provide the states with leadership and influence, and we are pleased with their response.

Reducing Burdens on Small Business

Under Administrator Browner, EPA has undertaken the most far reaching effort ever to review all EPA regulations and specifically to identify opportunities to eliminate record keeping and reporting requirements. Last March, Administrator Browner

directed the Agency to reduce the burden associated with environmental reporting by 25% -- a goal that achieves burden reduction more quickly than required in either the Paperwork Reduction Act or the recommendations of the White House Conference on Small Business. On our initial estimates, this 25% goal translated into a cut of 20 million hours; a closer examination of our baseline has led us to increase this target to 25 million hours. To identify potential burden reductions, EPA has used the line-by-line review of regulations conducted pursuant to the President's March 4, 1995, memorandum on regulatory reinvention. EPA staff have so far identified 23 million hours of reporting and record keeping burden to be eliminated, and EPA programs are working to identify the additional two million hours necessary to meet the target. To date, EPA is almost halfway toward meeting the Administrator's goal. Before the end of this year we intend to propose how we will eliminate the remaining burden hours we have targeted.

We have been able to make these changes without sacrificing our ability to protect public health and environmental quality. The Agency has been criticized for reporting requirements and penalties associated with "paperwork violations." Let me dispel that criticism by noting the importance of reporting requirements. Information reported by businesses is an important tool to enable us to set standards and controls and ensure compliance with environmental standards. In fact, without the ability to require complete, accurate, and verifiable environmental monitoring and reporting, we would have no reasonable means to assure business people that their public-spirited efforts to protect the environment are being shared by their competitors. In the absence of environmental self-reporting, we would need to employ an army of on-site inspectors or risk chaos in our competitive economic system. So our objective is not to eliminate environmental information itself, but rather to eliminate needless effort and unnecessary environmental information.

Fortunately, years of experience in collecting and using this information have taught us that in many cases we can still carry out our important environmental functions with less frequent reporting and monitoring, shorter retention times for records, and elimination of some reporting requirements altogether from facilities that have a minimal impact on the environment. In other words, we have a better understanding now of what is truly essential and what is not.

Small business will benefit from EPA's burden reduction. For example, last year EPA published the Universal Waste Rule, which provides a streamlined regulatory structure for the collection, transportation and accumulation of common hazardous wastes such as batteries, certain pesticides and mercury-containing thermostats. This rule makes it much easier for businesses to manage wastes that are being collected for recycling, and reduces the costs of compliance. It will significantly ease the burden on retail stores and other small businesses that generate and collect these wastes.

Earlier this spring, EPA reduced existing monitoring and reporting for facilities that discharge pollutants to the nation's surface waters based on a record of excellent compliance and a demonstrated ability to reduce specific pollutants beyond existing requirements. This is potentially very significant to small business because approximately three-quarters of these eligible facilities are small businesses. We estimate that this change to Discharge Monitoring Reports, EPA's largest single reporting requirement in terms of burden hours, will allow the average facility to eliminate over 25% of the burden associated with these requirements.

EPA reduced the burden for small businesses required to report to the Toxics Release Inventory (an inventory available to the public on releases of toxic substances) by developing an alternate reporting threshold. This year, for the first time, companies with low annual emissions who choose to certify that they meet this threshold will not have to submit reports to the Inventory.

In another example, EPA is revising existing regulations to cut in half the reporting frequency -- from quarterly to semi-annually -- for industrial facilities subject to Clean Air Act reporting requirements. Small businesses, such as chrome plating operations, which are subject to the requirements are benefiting from this change.

Eliminating burden does not always entail eliminating requirements. EPA also is eliminating burden by encouraging electronic reporting. This direction, an undertaking encouraged by the Administration, truly mirrors the spirit of H.R. 2715 (Paperwork Elimination Act) that was introduced by you in this Committee, and which passed in the House of Representatives with unanimous support. Several programs have successfully piloted electronic reporting procedures. One program, our reformulated gasoline program, has fully operational electronic reporting. Beginning early this summer, we will expand the use of electronic reporting to Discharge Monitoring Reports. This action will save the regulated community at least 200,000 hours, and possibly much more as the use of this technology spreads among delegated state programs and regulated companies. During the coming fiscal year, we plan to add opportunities for electronic reporting in both our safe drinking water and our hazardous waste programs.

Beyond these efforts to reduce existing burden, EPA is firmly committed to avoiding unnecessary new information requirements. Over the last year EPA avoided imposing unnecessary burdens in several new rules. In the long run, institutional and cultural change at EPA is taking hold as we move forward with procedures and projects that will ensure that paperwork burden will be minimized. These include procedures that go beyond the requirements in the Regulatory Flexibility Act to analyze impacts on small business and examine alternatives. For example, our planning to comply with the Regulatory Flexibility requirements of the recently enacted Small Business Regulatory Enforcement Fairness Act (SBREFA) have been aided measurably by the fact that, for the past three years, we have been routinely seeking regulatory flexibility for small

entities in any action that might conceivably affect them. Recent regulations show real differences in how we treat small businesses including expanded flexibility for small businesses in the national refrigerant recycling rule. EPA also has begun some long term reinvention projects such as the development of a "one-stop reporting" system to consolidate and simplify all environmental reporting.

Helping Small Business Comply with Environmental Regulations

Compliance assistance is the second major focus of EPA's reinvention efforts to benefit small business. EPA has taken a significant step toward helping small businesses comply with complex environmental requirements. To this end, EPA is funding Small Business Compliance Assistance Centers. The Agency has established centers for four business sectors so far: automotive service shops, printing plants, metal finishing operations and small farms. These centers, as they become fully operational in the coming months, will provide information on environmental regulations including plain English explanations of environmental requirements, information on how to comply and advice on how to lower compliance costs. The centers will also provide technical advice on pollution prevention and seek to put small businesses in contact with each other so that they can learn from each other.

Last week the Administrator announced a final policy, which becomes effective on June 10, on compliance incentives for small business. Under the policy EPA waives penalties for a small business for non-criminal, first-time violations of environmental requirements detected in a Federal or state compliance assistance program or disclosed as a result of an audit, provided the violation is corrected and there was no serious harm (or likelihood of imminent and substantial endangerment) to public health or the environment.

At the same time, EPA is continuing to direct its enforcement program to target the most significant public health and environmental risks. We are using enforcement measures of success that indicate risk reduced, including measures such as compliance rates and the type and amount of pollution reduced or avoided as a result of enforcement. By using these measures we hope to target enforcement action at the most serious risks, and judge our success, not on the number of cases filed or the amount of penalties collected, but rather on achievement of actual environmental results.

Reaching Out To Small Business

Finally, EPA welcomes and encourages the views of small business. We are listening to small businesses, actively seeking out the participation of small business more than ever before. The days are over when EPA staff in Washington, D.C. wrote rules without seeking the input of the regulated community until a draft rule was published in the Federal Register. We now hold focus groups, convene meetings, and regularly participate in meetings held by outside groups to get input early in the regulatory development process. We are making all of our proposed rules available on the Internet. EPA's Home Page provides comprehensive information about what is going on at the Agency in an accessible format that is easy to understand. The participation of small business in the development of EPA's regulations and policies is essential. However, it is not easy for us to do this effectively. The small business community is large and diverse. Involving small business is a challenge, but we are making the extra effort to ensure small business has access and input throughout the process.

We also want small business to participate in some of the new and precedent-setting projects EPA is undertaking as part of reinvention. Reinvention at EPA includes bold experiments that have received considerable attention in the media. The

centerpiece of these, the Common Sense Initiative, provides an opportunity for industries, together with other stakeholders, to look across all the ways that EPA interacts with the industry to find new opportunities for environmental protection that is cleaner, cheaper, and smarter. Of the six industry sectors that are part of the Common Sense Initiative, two sectors, metal finishing and printing, are dominated by small business.

Finally, let me end with one of our most important efforts to help small business. For the last ten years EPA's Small Business Ombudsman has provided a convenient first stop for small businesses to have their concerns addressed. The Small Business Ombudsman received over 20,000 inquiries from small businesses last year. These are requests for information about regulatory requirements, EPA publications, and attention to individual problems or grievances. The Ombudsman helps EPA staff gain insights and perspectives and helps solicit input of small business. She also acts as an advocate for small business within the Agency by participating in all major regulatory decisions affecting small business.

EPA's Commitment to Change

We at EPA are proud of our progress in reinventing environmental regulations. We think our efforts have assisted small business while protecting public health and the environment for all Americans. We have many activities underway that represent significant change in the way EPA interacts with small business. Change of this magnitude does not happen overnight. It will require constant attention and long-term follow through. But we are committed to sustained change built on partnership toward a goal we all share: public health and environmental protection at reasonable cost.

Changes such as those I have described today are not easy. It takes energy, dedication, and staff and dollar resources to rewrite regulations so that they are

responsive to small business concerns, to analyze impacts, to help business comply, and to give small business a meaningful role in Agency decision making. We think that these changes are terribly important.

Small business owners must join us in breaking the old adversarial patterns of behavior. They can help us by working with us in this effort. The White House Conference on Small Business has provided useful advice on the needs and concerns of small business. But we need to continue to find ways to work more effectively with small business. I have outlined for you just some of the more notable EPA's activities in the areas of burden reduction, compliance assistance, and improved communication. We welcome constructive feedback from small business on the effectiveness of these efforts and on how we can better involve small business in EPA decisions. We also welcome opportunities such as these to discuss in the public arena both how we are doing and how we might better meet the needs of small business

I would be happy to answer any questions.



CHEMICAL
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ASSOCIATION

WRITTEN STATEMENT

of the

CHEMICAL MANUFACTURERS ASSOCIATION

before the

HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON GOVERNMENT PROGRAMS

on

PAPERWORK REDUCTION

May 30, 1996

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The Chemical Manufacturers Association (CMA) is a non-profit trade association whose membership accounts for approximately 90 percent of the productive capacity of basic industrial chemicals in the United States. Approximately 40 percent of CMA membership are classified as small businesses.¹ CMA supports EPA's objective to reduce the paperwork burden it imposes by 25 percent.

EPA should include in its 25 percent reduction reporting and record keeping burdens on all respondents, whether they be small business, large business, or state and local governments. In the end, all members of our society -- not just individual businesses -- bear the costs of reporting.

It is "good government" to reduce paperwork requirements, wherever inefficient and nonessential requirements may exist, without sacrificing health, safety, and environmental objectives. CMA would like to work with EPA to determine outdated and unnecessary reporting requirements enabling a more efficient regulatory system as well as shifting resource allocations from paperwork to programs which will improve public health and increase environmental protection.

CMA is not opposed to reporting. CMA recognizes reporting is essential to verify compliance and demonstrate accountability to the regulatory agencies and the public. CMA's goal is not to cut paperwork solely for the sake of cutting paperwork, but to restructure the reporting system to become more efficient and cost-effective.

CMA generally concurs with the comments of EPA Director Thomas Kelly's (Office of Regulation Management and Information) remarks to the House Small Business Committee, Subcommittee on Government Programs, on May 30, 1996. However, CMA wishes to make two points about EPA's paperwork reduction plans and performance.

First, EPA has modified the original baseline for its 25 percent reduction. The original January 1, 1995 baseline was set at 81 million hours, the estimated burden imposed at that time on the basis of a tabulation of information collection requests filed with the Office of Management and Budget (OMB). A 25 percent reduction against that baseline implied a reduction of 20 million hours to an implied July 1, 1996 level of about 61 million hours.

Subsequently, EPA says it has found that the estimates set out in the January 1995 inventory were too low in several cases and has increased the January 1995 baseline to 101 million hours. A 25 percent reduction from this adjusted level implies eliminating 25 million hours to a new level of 76 million burden hours by December 31, 1996, a six month extension from the original June 30, 1996 completion target date.

¹ As defined by the Small Business Administration -- fewer than 1,000 employees for SIC code 2819 and 2869.

CMA is concerned that EPA modified its baseline a month prior to its initial deadline to meet the 25 percent reduction. EPA has yet to identify two million additional hours to complete its 25 million hour reduction. Therefore, CMA is concerned that EPA will adjust its baseline again and EPA will again extend its deadline from December 1996 to an even later date.

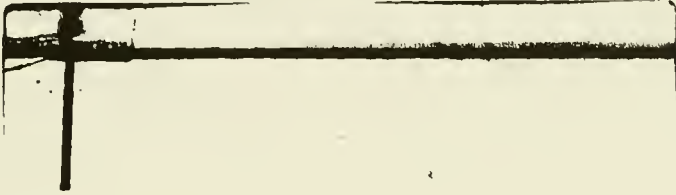
Second, statements from lower level officials at EPA indicate that it was never the intention of EPA to achieve absolute reductions in paperwork burden. That is, the 25 percent reductions would only represent cuts in the paperwork that existed as of January 1, 1995 and would not restrain the continued growth of total paperwork generated by the implementation of new regulations. Thus, as of December 31, 1996, if EPA is successful in its efforts, the total paperwork burden will be 25 million hours less than it otherwise would have been but, nevertheless, may be at a new high. If so, this conflicts with the impressions that have been conveyed by public pronouncements of EPA officials.

In light of these developments, CMA believes that:

- EPA should clarify its paperwork reduction goal statements and, taking into account its reduction efforts, provide an estimate -- to OMB and the public -- of the total paperwork burden that will be in place as of December 31, 1996.
- EPA should specifically identify by individual information collection request, the revisions it made to the original January 1, 1995 paperwork inventory baseline and make it publicly available.
- EPA should specifically identify, by individual information collection request, the burden reflected in the revised baseline, and the savings claimed against each individual information collection request's baseline amount.

These steps would clarify a confused situation and allow outside assessments of EPA's progress in stemming the continued growth of reporting and record keeping requirements.

Accompanying these comments to the House Small Business Committee, CMA is submitting to the record a study which identifies the Agency's original baseline in January 1995 and EPA mandated reporting requirements associated with 33 specific chemical lists. The study assesses the impact of current EPA reporting requirements on US industry and state and local governments.



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A Chemical Manufacturers Association Study

Environmental Paperwork

A Baseline for Evaluating EPA's Paperwork Reduction Efforts



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April 3, 1996

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Environmental Paperwork: A Baseline for Evaluating EPA's Paperwork Reduction Efforts was conducted by staff of CMA's Economics Division. The division is headed by Allen J. Lenz, who participated in development of the study. Dr. Lenz has been director of CMA's Economics Division since 1988. Before that, he served for 14 years in the Federal Government in a variety of international trade and economic positions. From 1982 to 1988, he was Director of the Office of Trade and Investment Analysis at the Commerce Department's International Trade Administration. Other government posts included Staff Director of the National Security Council and, while an active duty naval officer, Executive Secretary of the President's Council on International Economic Policy. He retired from the Navy with the rank of Captain after 21 years of service. Dr. Lenz has a B.S. degree from the University of Pennsylvania's Wharton School of Finance and Commerce, an M.B.A. from the University of Colorado and a Ph.D. from the Stanford Graduate School of Business. He is also the author of numerous books and papers, including *Beyond Blue Economic Horizons: Trade and Competitiveness in the 90s* (Praeger, 1991) and *Narrowing the U.S. Current Account Deficit: A Sectoral Analysis* (Institute for International Economic Analysis, 1992).

The principal author of the study is Jeffrey C. Terry, an Economist in the association's Economics Division. He joined the association in 1995, and his responsibilities include economics, statistical analysis and environmental policy issues. Before joining CMA, Mr. Terry worked under a research grant with Dr. Bruce Yandle of Clemson University to study selected environmental policy issues. Mr. Terry holds a B.S. in economics from Clemson University's College of Commerce and Industry and an M.S. in Economics from Clemson. He is the author of numerous papers, including *EPA's Toxic Release Inventory: What Is Its Purpose?* (Center for Policy Studies, Clemson University, 1994). His master's thesis, *The Evolution of Industrial Emissions Control and the Toxics Release Inventory Requirements*, was published by Clemson University in 1995.

Executive Summary

- Growing numbers of federal regulations have increased reporting requirements for businesses and state and local governments. The costs of processing this paperwork have also increased. The Environmental Protection Agency estimates the paperwork burden of 308 reporting requirements mandated by its regulations generated 4.53 million reports from industry and state and local governments. This paperwork took 85.8 million hours to prepare in 1994 -- an increase of more than 15 million hours from the year before (an increase of 22.7 percent).
- The paperwork costs of reporting are in addition to the pollution abatement and control costs frequently used to describe industry's environmental spending. Using EPA's own data, the costs of reporting under eight major environmental statutes alone was an estimated \$2.9 billion in 1994.
- There is evidence that current reporting requirements are inefficient and unnecessarily burdensome for businesses and state and local governments. For example, 37 lists created by 10 major environmental, health and safety statutes mandate 6,986 reporting requirements on 2,554 individual chemicals. Many of the chemicals appear multiple times on these lists; some appear on as many as 21 of the lists.
- One federal reporting requirement -- the Toxic Release Inventory (TRI), which is mandated by the Superfund Amendments and Reauthorization Act -- generated 79,987 reports in 1993. Beginning in 1995, TRI reporting volumes and costs will increase substantially due to the increase of listed chemicals from 364 to 650. This will raise the number of TRI reports to more than 108,000. Estimated costs of reporting will rise to \$331 million a year.
- Last March, EPA pledged to reduce the paperwork burden for industry and state and local governments by 25 percent -- a reduction of more than 20 million hours -- by June of this year. Given that EPA paperwork requirements appears to be trending up and not down, it appears unlikely that EPA will be able meet its 25-percent reduction goal.
- The costs of paperwork preparation are not identified in the budgets of businesses and state and local governments. Nevertheless, they are real, large and growing. Ultimately, these costs are borne not by individual companies but by the economy as a whole. EPA's progress should be carefully monitored to ensure that reductions it may claim are validated and represent real, cumulative reductions in paperwork that must be prepared each year by industries and state and local governments to comply with the nation's environmental laws.

A Chemical Manufacturers Association Study

Environmental Paperwork

A Baseline for Evaluating EPA's Paperwork Reduction Efforts

Background

New Federal regulations have dramatically increased the reporting requirements and paperwork costs imposed by the Federal Government on U.S. industry and state and local governments. The Environmental Protection Agency (EPA) now ranks fifth--just behind the Department of Transportation--in the total annual reporting hours it imposes on businesses and state and local governments. According to U.S. government data, EPA regulations in 1994 mandated 308 reports that generated 4,532,927 reports, requiring approximately 85.8 million hours of respondents' time to prepare.

The costs of meeting EPA paperwork and reporting requirements are not included in government compilations of "pollution and abatement control costs," the most widely used measure of industry's environmental costs. This study seeks to better identify the impact reporting requirements have on the chemical industry, industry generally, and on state and local governments. The study focuses on the number of lists and reports generated by EPA regulations. The work has several objectives for use in policy development and advocacy:

- Identify opportunities for more efficient reporting
- Monitor EPA's progress toward meeting its declared paperwork reduction goals
- Assess the EPA-mandated "paperwork" costs and, particularly, chemical industry costs
- Determine the volume and trends of "list" reporting

In addition, the study compiles various data sets that will increase understanding of chemical lists and their uses. To date, the study has produced four outputs that are briefly described in an appendix to this report. The remainder of this report summarizes progress in meeting the study's policy development and advocacy objectives.

Industry Reporting Costs

Federal government environmental, health, and safety statutes are written by the Congress in broad terms that set goals and requirements but often do not describe exactly how these objectives are to be met and do not identify specific chemicals to be regulated. Implementing these statutes requires the promulgation of thousands of more detailed regulations by Federal agencies that are assigned responsibility for administering the statutes. Many of these regulations require submission of periodic reports on specific chemicals and waste substances. These reports may be used by the responsible agency to monitor compliance, to collect statistical information, or for other purposes.

According to the Office of Management and Budget (OMB), regulations administered by ten EPA departments have established 308 different reporting rules for U.S. industry and state, local, and tribal governments. By EPA estimates, these reports generated 4,532,927 reports. (Figure 1). Also according to EPA estimates, preparation of these reports required 85,753,369 hours of respondents' time to complete. These estimates include only the time required to prepare the report and to submit it to the Federal Government. Also, these estimates are exclusive of the dozens of EPA regulations that require maintaining records at facilities but do not require submission of scheduled reports. Nor do the estimates include the time required to provide information to third parties--for example, state and local authorities--as is required by some regulations.

1. 1994 Reports Mandated by EPA Departments

EPA Department	Number of Reports	Annual Responses	Annual Reporting Hours
Administration and Resource Mgmt	8	50,468	1,111,354
Air and Radiation	150	958,808	16,725,472
Office of Administrator	4	70,620	20,207
Enforcement and Compliance Assurance	1	1,008	9,703
Environmental Education	1	300	300
Prevention, Pesticides, and Toxic Substances	54	672,522	11,844,739
R & D	12	30,865	306,708
Policy Planning and Evaluation	6	11,020	18,093
Solid Waste and Emergency Response	39	1,055,994	18,921,145
Water	33	1,681,322	36,795,648
Total	308	4,532,927	85,753,369

In 1994, the time it took to fill out mandated reports increased by 15 million hours (or 22.7 percent). The increase reflects both the addition of new requirements and revisions to the estimates of the time required to meet existing reporting requirements. Assuming a cost of \$40 per hour--a conservative estimate compared to EPA's \$53-per-hour estimate¹ for TRI reporting -- reporting costs of EPA-mandated reports are approximately \$3.43 billion for industry and state, local, and tribal governments.

CMA's analysis indicates that nearly two-thirds (at least 54.6 million hours) of the EPA-estimated reporting time comes from the implementation of eight major statutes that affect the chemical industry (and other U.S. manufacturing industries) directly:

- Clean Air Act (CAA)
- Toxic Substances Control Act (TSCA)
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- Resource Conservation and Recovery Act (RCRA)
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Superfund Amendments and Reauthorization Act (SARA)
- Clean Water Act (CWA)
- Safe Drinking Water Act (SDWA)

According to the Office of Management and Budget, U.S. industry respondents generated 2,982,052 reports in 1994 to comply with these eight statutes. EPA estimates it took 54,571,915 hours to complete the reports. (Figure 2). The eight statutes accounted for 64 percent of the total reporting hours required by EPA reports. Using EPA's \$53-an-hour estimate, the total cost to all respondents to prepare these reports was \$2.9 billion.

2. Annual Reporting Burden of Selected Environmental Laws

	Annual Responses	Annual Reporting Hours	Total Cost of Reporting
CAA	838,629	9,331,296	\$494,558,688
TSCA	22,080	511,862	\$27,128,686
FIFRA	204,455	3,194,798	\$169,324,294
RCRA	546,065	7,174,088	\$380,226,664
CERCLA & SARA	118,020	4,536,937	\$253,741,399
CWA	1,249,010	29,811,555	\$1,580,012,415
SDWA	3,793	11,379	\$603,087
Total	2,982,052	54,571,915	\$2,905,595,233

¹ EPA's \$53-per-hour estimate is derived from Exhibit 3.1 in *EPA's Regulatory Impact Analysis of the Addition of Various Chemicals and Chemical Categories to the EPCRA 313 List of Toxic Chemicals* on September 28, 1993, page 28.

Detailed response and cost-estimate data by industry sector are not generally available for the reports mandated by EPA. However, this information is readily available for Toxic Release Inventory (TRI) reporting. The TRI program is one of the best known of the Federal Government's reporting requirements. It is also one of the most extensive. TRI reporting is required under Title III of the Superfund Amendments and Reauthorization Act of 1986.

Toxic Release Inventory Reporting

According to EPA data, 23,321 facilities submitted 79,987 Form R reports to the EPA in 1993 (the latest year for which this information is available). Also according to EPA data, these numbers will increase substantially. In 1994, the agency added 286 chemicals to the TRI list. These additions increased the number of chemicals and chemical categories on the TRI to 650. EPA estimates that as a result of the expansion of the TRI list, 28,196 more Form R reports will flow into the agency for 1995, pushing the total to more than 108,000. At the same time, the number of facilities that will have to report will also increase, to 25,725.

3. TRI Reporting

	Chemical Industry	Manufacturing
<u>Original TRI (1993)</u>		
#Form Rs Submitted	22,363*	79,987*
#Facilities Reporting	4,150*	23,321*
<u>Transition Year 1995 and Subsequent Years</u>		
#New Form Rs	8,177	28,196**
#New Facilities	428	2,404**
% Increase in Reporting	36.6%	35.3%
Total #Form Rs	30,540	108,183
Total #Facilities Reporting	4,578	25,725

* Data from 1993 Toxics Release Inventory Public Data Release;

** Data from EPA's Regulatory Impact Analysis, September 28, 1993

EPA estimates each Form R takes an average of 53 hours to complete. Industry experience -- and a study conducted in 1994 for CMA by Price Associates -- suggest that EPA's estimate is too low. Nevertheless, for the purposes of this study, CMA used EPA's estimate -- as well as the Agency's estimate of per-hour labor costs -- to compute the direct reporting costs of TRI. Direct reporting costs are the wage and salary costs of preparation of the Form Rs. Using these estimates, total 1993 direct TRI reporting costs were \$63.1 million for the chemical industry (SIC 28) and \$238 million for the manufacturing sector as a whole (SIC 20 through 39). (See Figure 4.)

4. Estimated TRI Direct Costs

	Chemical Industry		Manufacturing Sector	
	hours	cost*	hours	cost*
1993 Reporting	1,233,239	\$63,055,502	4,317,311	\$237,967,221
1995 Transition Year	2,053,113	\$109,755,502	7,245,434	\$404,567,221
Subsequent Years	1,657,165	\$89,145,502	5,831,331	\$331,147,221

*Costs are derived from EPA wage estimates (1995 Dollars)

TRI reporting costs will increase for 1995. According to EPA, in 1995 the new reporting requirements will more than double the time required to complete the newly added Form R reports – from 53 hours to 112.7 hours. Reporting costs for all of the U.S. manufacturing sector will rise to about \$404.6 million. For the chemical industry, reporting costs will increase to about \$109.8 million.

The Agency estimates that once the new reporting routine is established, Form R preparation time for the added responses will return to the 53-hour average of 1993. Using this hours-per-Form R estimate, TRI reporting costs for 1996 are estimated to be \$331 million for all of manufacturing – and approximately \$89.1 million for the chemical industry.

Chemical Lists

Chemicals are heavily regulated by federal environmental, safety and health laws. Identifying – or “listing” – individual chemicals and placing specific reporting requirements on the listed substances have become common tools used by governments at all levels to regulate the use, manufacture, processing, storage and disposal of chemicals and chemical wastes.

In its study, CMA identified 37 individual federal chemical regulatory lists that have been created under ten major environmental, safety and health statutes. The 37 lists identify and set various reporting requirements for 2,357 individual chemicals; 68 broad chemical categories; and 129 categories of wastes. The total: 2,554 chemicals, chemical categories and wastes.

5. Chemical List Information

Agency/Statute	# Lists	# of Different Items	# of Requirements
EPA: TSCA	10	940	1,534
CWA	3	495	672
CAA	5	553	737
SDWA	3	113	201
RCRA	7	450	1,217
CERCLA	1	718	718
SARA	3	1,023	1,294
FIFRA	1	44	44
OSHA:	2	419	479
DEA:	2	32	32
Total	37	2,554 different items	6,986

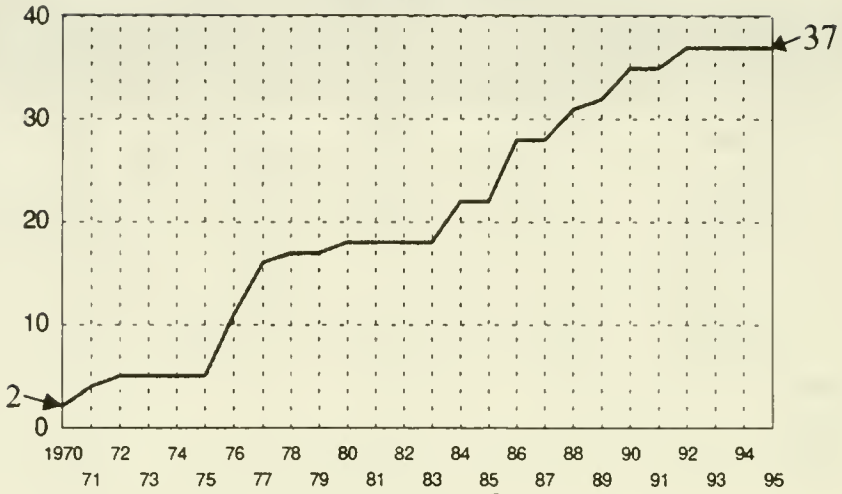
In all, the 37 lists set 6,986 reporting requirements on the 2,554 chemicals and chemical categories. For example, the 10 lists promulgated under the Toxic Substances Control Act (TSCA) call for 1,534 individual reports on 940 chemicals and chemical categories. The Superfund Amendments and Reauthorization Act (SARA) -- in three different lists -- mandates 1,294 reports on 1,023 chemicals and chemical categories. (Figure 5 identifies the number of lists, the number of individual substances and the number of reporting requirements mandated by the 10 statutes.)

Chemical lists have proliferated in recent years. In 1970, there were two: the criteria pollutants and volatile organic compounds lists of the Clear Air Act, which mandated reporting requirements on 371 chemicals (See Figures 6 and 7). Today, there are 37 lists setting nearly 7,000 reporting requirements. Although no new lists have been created under the 10 major environmental, health and safety statutes since 1992, some of the 37 lists have been expanded. For example, Title III's Toxic Release Inventory has been expanded to 650 chemicals.

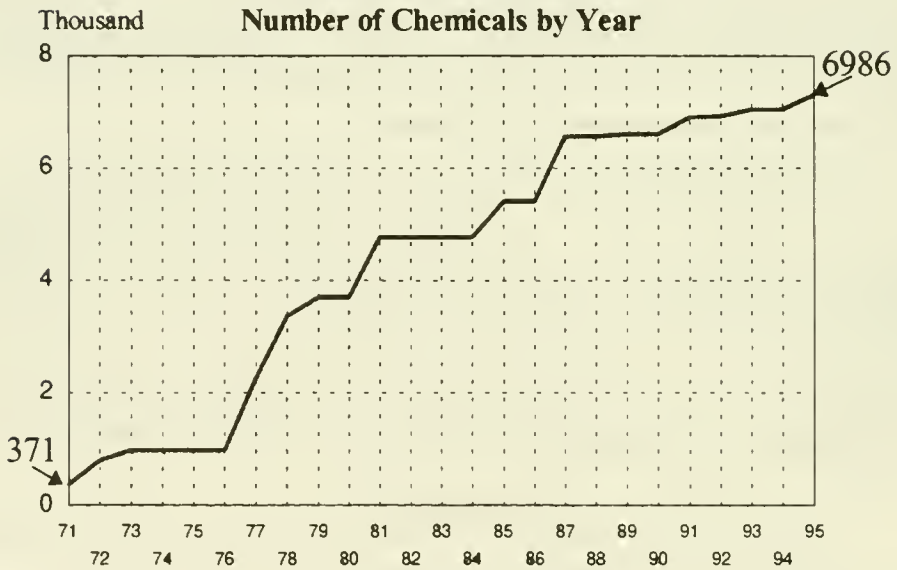
The 37 lists examined in this study vary widely in their requirements. They do, however, have one thing in common: each requires reporting to EPA. The reports generated as a result of these requirements typically deal with the manufacture, distribution, processing, use and disposal of chemicals. Some of the information required includes:

- Chemical testing information by specific facilities.
- Actual and projected volumes of chemicals being manufactured, imported, exported, disposed of (or about to be).
- The extent to which the use of a chemical will increase exposure to workers.
- Descriptions of byproducts produced.
- Categories of use.
- Data on environmental and health effects.

6. Chemical Lists



7. Reporting Requirements



Not every manufacturing facility is affected by all 6,986 reporting requirements established by the 37 lists. However, many facilities must report information on dozens of chemicals. They also must report on the same chemical several times.

The study found that of the 2,357 individual chemicals on the 37 lists, 106 of them are on 10 or more of the lists. Approximately half of the chemicals -- 1,272 -- appear on two or more lists. And 395 of the chemicals -- or 16 percent -- appear on five or more of the lists. One of the chemicals -- chlorobenzene -- appears on 21 of the lists.

The Toxic Release Inventory, perhaps the best known of all the chemical lists as well as one of the newest and most extensive, is different from most other lists. The TRI was created as a part of the Superfund Amendments and Reauthorization Act of 1986.

Originally, it required manufacturing facilities to report on 336 chemicals and chemical categories. This original list was created by Congress by combining two state lists: the New Jersey Community and Worker Right-to-Know Act (1984) and the Maryland Public Access to Information on Hazardous and Toxic Chemicals Act (1985).

The EPA has made changes to the TRI every year since 1987, adding and deleting specific chemicals. Beginning in 1991, the Pollution Prevention Act greatly expanded the reporting requirements to include methods of source reduction and an accounting of TRI chemicals that are generated as byproducts and recycled, recovered for energy, or treated. In 1994, the agency expanded the original TRI list to cover 286 additional chemicals and chemical categories.

The uses of chemical lists have evolved during this time. Typically, lists have been used as a part of the command-and-control system of setting objectives and mandating performance requirements that must be met for the chemicals.

But unlike most other lists, the TRI does not set specific performance requirements. Instead, it requires only that facilities report on emissions of the listed substances to the air, land and water, as well as on the amounts recycled, recovered for energy, and treated to render them harmless. The TRI has become an accepted national measure of pollution prevention. Since 1987 (the first year in which companies had to report under the TRI), the U.S. chemical industry has reduced emissions of TRI chemicals by 49 percent. During that same time, production has risen by 18 percent.

Still, some organizations and individuals have sought to use the TRI data for purposes for which it was never intended -- as well as to ascribe meaning to TRI data that cannot be supported. EPA's own Science Advisory Board has indicated that the TRI is not a suitable vehicle for risk management.

Despite assertions by some organizations to the contrary, TRI data cannot be used to determine the actual risk posed by any of the individual chemicals. TRI data show only that a substance has been emitted, recycled, reused in energy recovery or treated to render it harmless. The data do not indicate risks or whether anyone has actually been exposed to TRI chemicals. Companies can, however, use the data to help decide where their emission reduction and pollution prevention efforts will do the most good.

Conclusions

The EPA, under the Paperwork Reduction Act and goals established by President Clinton, has pledged to reduce paperwork requirements by 25 percent by June of this year.

On March 29 of this year, in a speech to the Commonwealth Club in San Francisco, Carol Browner, the EPA Administrator, said in the last year the agency has "eliminated more than 10 million hours of paperwork for businesses and communities." By the end of the year, she said, "we expect to eliminate another 10 million hours of paperwork -- time that will no longer be spent filling out needless forms..."

According to EPA's own data, collected as a part of this study, it took U.S. businesses and state and local governments nearly 86 million hours to complete the paperwork required by the agency in 1994. That was an *increase* of nearly 15 million hours -- or nearly 23 percent -- from the year before. The state and local government share of the 86 million hours was 19.4 million hours -- or 22.6 percent of the total.

The trend in EPA paperwork requirements appears to be up -- not down -- as Mrs. Browner says. For example, the agency has announced plans to significantly expand TRI reporting. The new reporting would require companies to report on production, inventories, use and occupational demographic data for each of the 650 TRI chemicals and chemical categories. In addition, EPA plans to expand the number of industries which will be required to report under the TRI program.

Clearly, there is a need to closely monitor the Agency's paperwork reduction efforts. As the study shows, the collection and publication (not to mention maintenance) of large volumes of information comes at a cost. And that cost, like all other costs of production, is ultimately paid by the public.

Existing requirements for information should be met as efficiently as possible. What's more, as new information requirements are considered, they should be subjected to a rigorous test to make sure the information is indeed needed and that its collection, publication and maintenance will provide a clear benefit to the public, and that the benefit will be greater than the cost.

Appendix

Regulatory Chemical Lists Study Outputs

The following materials were developed as a result of the research. For copies, contact Jeffrey C. Terry at CMA (703-741-5933).

- **Itemized Regulatory Chemical List Matrix:** This matrix lists each of 2,357 different chemicals, 68 different chemical categories, and 129 waste categories that appear on one of more of the 37 lists. The matrix identifies each chemical name and CAS number, as well as each statute and list under which that substance is regulated. The matrix has significant potential usefulness to member companies' plant managers in assessing their reporting requirements.
- **"Chemical Lists": Selected Data Outputs From an Examination of the Evolving Use of Lists of Chemicals for Regulatory Purposes:** This product gives a brief overview of the use of chemical lists as regulatory tools and identifies each of 37 different chemical lists promulgated from 10 different statutes. It also indicates the original purposes behind the promulgation of each list and identifies the listing criteria for each. Other sections identify statute-specific information requested by the EPA and sequence the lists chronologically, which may assist in determining how older chemical lists influenced newer lists.
- **Compliance Reporting Costs for EPA-Administered Environmental Laws:** Annual reporting numbers and reporting hours were obtained from Information Collection Requests (ICRs) reported to OMB. This information has facilitated CMA development of paperwork cost estimates for eight environmental statutes. The information available provides the EPA-estimated total number of responses and the EPA-estimated time required per response for industry as a whole. This allows assessments of reporting costs on regulations relevant to chemical manufacturing interests.

Acronyms

- CERCLA -- Comprehensive Environmental Response, Compensation and Liability Act
- CWA -- Clean Water Act
- CAA -- Clean Air Act
- DEA -- Drug Enforcement Administration
- FIFRA -- Federal Insecticide, Fungicide and Rodenticide Act
- OSHA -- Occupation Safety and Health Administration/Occupation Safety and Health Act
- RCRA -- Resource Conservation and Recovery Act
- SARA -- Superfund Amendments and Reauthorization Act
- SDWA -- Safe Drinking Water Act
- TRI -- Toxic Release Inventory
- TSCA -- Toxic Substances Control Act



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 18 1996

OFFICE OF
POLICY, PLANNING AND EVALUATION

The Honorable Peter G. Torkildsen
Chairman, Subcommittee on
Government Programs
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity on May 30 to present testimony on the many programs underway at the Agency that benefit small businesses. This responds to questions that I did not answer directly at the hearing, but promised to provide for the record. Attached please find fact sheets and written comments that should be responsive to your Committee's questions on the following three issues:

- ◆ A summary of the regulatory burden according to what percentage is devoted to recording requirements and what percentage is devoted to reporting requirements.
- ◆ A summary of EPA's Underground Storage Tanks program, and the program contact for the state of Illinois.
- ◆ A summary of those efforts at EPA designed to administer the Superfund program more fairly. Specifically, those programs that address the need, when assessing liability, to distinguish between owners who polluted, and business owners that purchased contaminated land without knowing of the contamination.

As a courtesy, I have sent the attachments to the personal offices of those Representatives that posed the particular questions. Please contact us if we can be of further assistance.

Sincerely,

Thomas E. Kelly
Director, Office of Regulatory
Management and Evaluation

Enclosure



Printed on Recycled Paper

PERCENTAGE OF REGULATORY BURDEN FOR RECORDING REQUIREMENTS
AND REPORTING REQUIREMENTS

This calculation is difficult to make because the Office of Management and Budget (OMB) does not require that reporting burden be separated from recordkeeping burden. Our Agency's burden is in the range of 50-60 percent reporting and 40-50 percent recordkeeping. The following paragraph explains how we arrived at this estimate.

A review of the Agency's 10 largest collections, which account for 70 percent of the Agency's approved burden, showed that about two thirds of that burden is reporting (including testing/monitoring) and one third is recordkeeping. This group of Information Collection Requests (ICRs) may over-represent reporting burden for two reasons. First, monitoring or testing, which many EPA regulations require in addition to reporting and recordkeeping, is usually counted as reporting burden and can be a significant component of that estimate. Second, the permitting and certification type collections, which typically cover only the activities associated with obtaining the permit or certification, are considerably larger than the individual standards which apply to specific pollutants or industries. The information requirements specified in the various permits are contained in separate ICRs for individual pollutants or industries (for example, a National Emission Standard for Hazardous Air Pollutants (NESHAP) for Asbestos and a New Source Performance Standard (NSPS) for Petroleum Dry Cleaners) and rely more heavily on recordkeeping than reporting. A review of the Agency's 10 largest collections involving pollutant or industry-specific standards revealed that the proportional burden distribution in these collections is roughly the reverse of the 10 largest collections overall, i.e. one third of the burden is reporting and two thirds is recordkeeping. If we assume, for the sake of simplicity, that these industry and pollutant specific collections represent the balance of the Agency's approved burden, then overall the Agency's burden is in the range of 50-60 percent reporting and 40-50 percent recordkeeping.

UNDERGROUND STORAGE TANKS CONTACTS FOR THE STATE OF ILLINOIS

The office with responsibility for Illinois' underground storage tanks program is the Office of State Fire Marshall, Division of Petroleum and Chemical Safety, 1035 Stephenson Drive, Springfield, IL 62703 The telephone number for the Director of the program, James I McCaslin is (217) 785-5878 The office with responsibility for leaking underground storage tanks is the Illinois Environmental Protection Agency, Bureau of Land, Division of Remediation Management, Leaking Underground Storage Tanks section, P O Box 19276, Springfield, IL 62794-9276 The telephone number for the Director of the program, Doug Clay is (217) 782-6760



Don't Wait Until 1998

Spill, Overfill, And Corrosion Protection for Underground Storage Tanks



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NOTE: The requirements for underground storage tanks referred to in this booklet can be found in the Code of Federal Regulations (CFR), see 40 CFR, Part 280. Sections of the CFR can be ordered from the Superintendent of Documents, Box 371954, Pittsburgh, PA 15250-7954.

DISCLAIMER: Any reference to or depiction of commercial products in this booklet is solely for explanatory purposes and is not intended as an endorsement of these products.

Why Should You Read This Booklet?

This booklet contains information to help you meet requirements for underground storage tank systems (USTs) *installed before December 22, 1988*. We call these older tank systems "*existing USTs*."

Federal rules require you to make sure your existing USTs have the following by December 22, 1998:

- Spill protection
- Overfill protection
- Corrosion protection

Check with your state regulatory agency to find out if the state has an earlier deadline or additional requirements.

You must choose one of the following actions for an existing UST:

- Add spill, overfill, and corrosion protection by December 22, 1998
- Close the existing UST by December 22, 1998
- Replace the closed existing UST with a new UST

You should act as soon as possible. Without the protection provided by upgrading or replacing, your UST is more likely to leak, damage the environment, and leave you with costly cleanups. The next page lists several advantages of acting early.

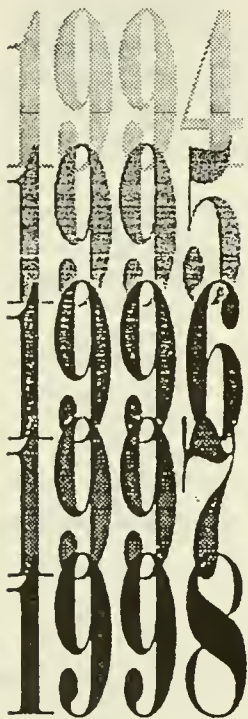
This booklet focuses on how you can meet upgrade requirements. The basic upgrade requirements are listed on page 3. Some information on properly closing an UST appears on page 12. You can find more information on the requirements for new UST systems (those installed after December 22, 1988) in EPA's publication "Musts for USTs" (ordering information on page 15).

This booklet uses "upgrading" and "upgrade" to mean adding spill, overfill, and corrosion protection to existing USTs.

If your existing USTs have not been upgraded or have not been properly closed by the 1998 deadline, you can be cited for violations and fined.

Why Should You Upgrade Or Replace Early?

*Start planning your
upgrade, closure,
or replacement
NOW!*



*Don't let 1998
arrive before you
are ready!*

- Early upgrading or replacing prevents leaks that would otherwise occur between now and December 1998. Avoiding leaks benefits the environment and your business. If your UST does not leak, you will not face costly mandatory cleanups or potential criminal suits or civil suits for damage claims.
- As December 1998 nears, increased customer demand to upgrade, close, or replace USTs may result in higher charges for these services. Also, you may have trouble finding available contractors and supplies needed to meet the deadline.
- It can take several months to upgrade, close, or replace your system. Bad weather or contractor delays are not unusual. Before work can start, local construction and regulatory permits may be necessary. The sooner you get started, the better the chance you will meet or beat the 1998 deadline.
- If you miss the 1998 deadline for any of the reasons noted above, you can be cited for violations and fined. Failure to be in compliance may reduce or eliminate coverage provided by insurance firms or state reimbursement funds—just when you may need these financial resources.
- Your state reimbursement fund or insurance company may offer financial incentives to upgrade or replace earlier, such as lower deductibles or premiums.
- Current state assistance programs that provide low cost loans to upgrade or replace USTs may be gone by 1998. Acting sooner may allow you to take advantage of these programs.
- If you discover a leak during upgrading or closing and need help from your state reimbursement fund, you may find the state fund bottlenecked with multiple claims around 1998.

What Are The Basic Upgrade Requirements For *Existing* USTs?

Spill Protection *(see pages 4–5)*

Existing tanks must have catchment basins to contain spills from delivery hoses.

Overfill Protection *(see pages 6–7)*

Existing tanks must use ONE of the following:

- Automatic shutoff devices
- Overfill alarms
- Ball float valves

Corrosion Protection *(see pages 8–11)*

Existing tanks must match ONE of the following:

- Steel tank has corrosion-resistant coating AND cathodic protection (such as an sti-P₃[®] tank)
- Tank made of noncorrodible material (such as fiberglass)
- Steel tank clad with noncorrodible material (such as an ACT-100[®] tank) or tank enclosed in noncorrodible material
- Uncoated steel tank has cathodic protection system
- Uncoated steel tank has interior lined with noncorrodible material
- Uncoated steel tank has cathodic protection AND interior lined with noncorrodible material

Existing piping must match ONE of the following:

- Uncoated steel piping has cathodic protection
- Steel piping has a corrosion-resistant coating AND cathodic protection
- Piping made of (or enclosed in) noncorrodible material (such as fiberglass)

1998 Deadline:
Existing USTs must be protected from spills, overfills, and corrosion by December 1998.

ALL tanks and piping must already have leak detection. See EPA's "Straight Talk on Tanks" (ordering information on page 15).

When new USTs are installed, they must have leak detection and protection from spills, overfills, and corrosion. See EPA's "Musts for USTs" (ordering information on page 15).

How Can You Protect Against Spills?

You and your fuel deliverer should see "Keeping It Clean," a video that shows how deliveries can be made safely with no spills (ordering information on page 15).

Many releases at UST sites come from spills. Spills often occur at the fill pipe when the delivery truck's hose is disconnected. Although these spills are usually small, repeated small releases can cause big environmental problems.

Human error causes most spills. These mistakes can be avoided by following standard tank filling practices. For example, you must make sure there is room in the UST for the delivery, and the delivery driver must watch the delivery at all times. If you and the delivery driver follow standard practices, nearly all spills can be prevented. For this reason, federal UST regulations require that you follow standard filling practices now.

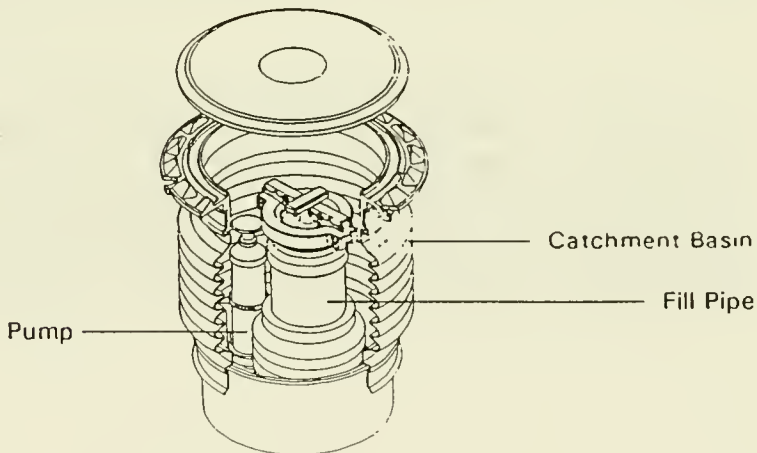
In addition, USTs must have catchment basins to contain spills. New USTs must have catchment basins when they are installed.

Federal rules require that existing USTs must have catchment basins by December 1998.

If an UST never receives more than 25 gallons at a time, the UST does not have to meet the spill protection requirements. For example, many small used oil tanks fall in this category.

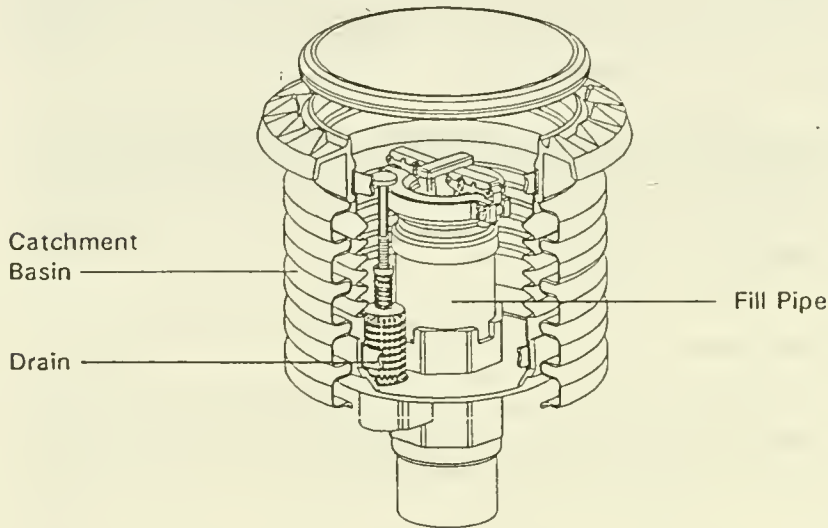
What Are Catchment Basins?

Catchment basins are also called "spill containment manholes" or "spill buckets." Basically, a catchment basin is a bucket sealed around the fill pipe (see illustration below).



To protect against spills, the basin should be large enough to contain what may spill when the delivery hose is uncoupled from the fill pipe. Basins range in size from those capable of holding only a few gallons to those that are much larger—the larger the catchment basin, the more spill protection it provides.

You need a way to remove liquid from catchment basins. Manufacturers equip catchment basins with either pumps or drains to remove liquid. The illustration on the previous page shows a catchment basin with a pump; the illustration below shows a catchment basin with a drain.



Your equipment supplier can help you choose the size and type of catchment basin that meets your needs.

You should try to keep water out of catchment basins. Some catchment basins can collect enough water and sediment, along with spilled product, to make draining this mixture into the tank unwise. If this happens, you may pump out the catchment basin and dispose of the liquid properly. If the liquid contains fuel or chemicals, it could be considered a hazardous waste. Contact your state agency responsible for hazardous waste for information on testing and handling requirements.

Having the surrounding surface slope away from the top of catchment basins helps keep water out of them.

How Can You Protect Against Overfills?

If an UST never receives more than 25 gallons at a time, the UST does not have to meet the overfill protection requirements. For example, many small used oil tanks fall in this category.

Overfills usually release much larger volumes than spills. When a tank is overfilled, large volumes can be released at the fill pipe and through loose fittings on the top of the tank or a loose vent pipe. The tightness of these fittings normally would not be a problem if the tank were not filled beyond its capacity.

You can solve overfill problems by:

- Making sure there is enough room in the tank for the delivery BEFORE the delivery is made;
- Watching the entire delivery to prevent overfilling or spilling; and
- Using equipment that protects against overfills.

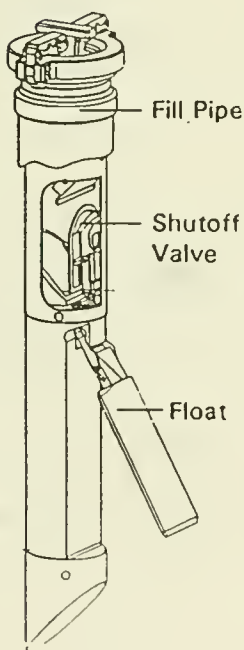
Federal rules require that existing USTs must have overfill protection devices by December 1998.

New USTs must have overfill protection devices when they are installed. The three main types of overfill protection devices (automatic shutoff devices, overfill alarms, and ball float valves) are described below and on the next page.

NOTE: If you have "pumped delivery" where fuel is delivered under pressure, you must make sure your overfill protection device works compatibly with pumped deliveries. Also, remember that overfill protection devices are effective only when combined with careful filling practices.

1. What Are Automatic Shutoff Devices?

An automatic shutoff device installed in an UST's fill pipe can slow down and then stop the delivery when the product has reached a certain level in the tank. This device—sometimes simply called a "fill pipe device"—has one or two valves that are operated by a float mechanism (the illustration on the left shows one kind of automatic shutoff device).



Some automatic shutoff devices work in two stages. The first stage drastically reduces the flow of product to alert the driver that the tank is nearly full. The driver can then close the delivery valve and still have room in the tank for the product left in the delivery hose.

If the driver does not pay attention and the liquid level rises higher, the valve closes completely and no more liquid can be delivered into the tank, leaving the driver with a delivery hose full of product.

To work properly, all overfill devices must be installed carefully at the correct distance below the tank top specified by the manufacturer.

2. What Are Overfill Alarms?

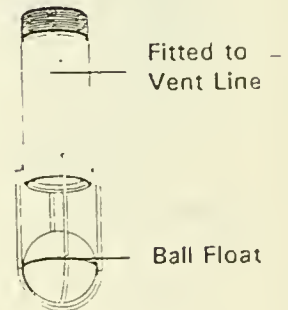
Overfill alarms use probes installed in the tank (see illustration on the right) to activate an alarm when the tank is either 90 percent full or within 1 minute of being overfilled. Either way, the alarm should provide enough time for the driver to close the truck's shutoff valve before an overfill happens. Alarms must be located where the driver can see or hear them easily. (Overfill alarms are often a part of automatic tank gauging systems.)

Overfill alarms work only if they alert the driver at the right time and the driver responds quickly. Remember to put the alarm on an electrical circuit that is active all the time so that the alarm will always work. Many deliveries are made at night when the facility is closed. You don't want to turn off your alarm when you turn off the office lights.



3. What Are Ball Float Valves?

Ball float valves (see illustration on the right) are placed at the bottom of the vent line several inches below the top of the UST. The ball floats on the product and rises with product level during delivery until it restricts vapor flowing out the vent line—before the tank is full. If all tank fittings are tight, the ball float valve can create enough back pressure to restrict product flow into the tank—which can notify the driver to close the truck's shutoff valve. However, if the UST has loose fittings, sufficient back pressure may not develop and will result in an overfill. *Note: Manufacturers do not recommend using ball float valves with suction piping, pressurized delivery, or coaxial Stage I vapor recovery.*



How Can You Protect Against Corrosion?

Federal rules require corrosion protection for USTs because unprotected steel USTs corrode and release product through corrosion holes.

You already meet the requirements for corrosion protection if your UST system matches one of the following performance standards for new USTs:

- Tank and piping completely made of noncorrodible material, such as fiberglass. Corrosion protection is also provided if tank and piping are completely isolated from contact with the surrounding soil by being enclosed in noncorrodible material (sometimes called "jacketed" with noncorrodible material).
- Tank and piping made of steel having a corrosion-resistant coating AND having cathodic protection (such as an sti-P₃[®] tank with appropriate piping). A corrosion-resistant coating electrically isolates the coated metal from the surrounding environment to help protect against corrosion. *Asphaltic coating does not qualify as a corrosion-resistant coating.* Methods of cathodic protection are briefly explained on page 11.
- Tank made of steel clad with a thick layer of noncorrodible material (such as an ACT-100[®] tank). This option does not apply to piping. *Galvanized steel is not a noncorrodible material.*

It is not practical to add coatings or claddings to existing steel USTs that have no corrosion protection. Instead, you must choose one of the following three methods to add corrosion protection to existing steel tanks:

1. Add cathodic protection or
2. Add interior lining to tank or
3. Combine cathodic protection and interior lining.

These methods are described on the following pages.

Corrosion results when bare metal and soil and moisture conditions combine to produce an underground electric current that destroys hard metal. Over time, corrosion creates holes and leaks develop.

1. **Add cathodic protection.** If you are adding only cathodic protection, you must do the following:

■ **First, assess tank integrity.** Satisfy ONE of the following methods to make sure that the tank is structurally sound:

- If the tank is **LESS THAN 10 YEARS OLD**, you can use results from one of the monthly leak detection methods to show the UST is not leaking (groundwater monitoring, vapor monitoring, interstitial monitoring, automatic tank gauging, statistical inventory reconciliation, or other approved methods).
- If the tank is **LESS THAN 10 YEARS OLD**, you can use results from two tank tightness tests to show the UST is not leaking. The first test takes place before you install cathodic protection, and the second test takes place between 3 and 6 months after installation.
- If the tank is **10 YEARS OLD OR MORE**, it must be internally inspected, tested, and assessed to make sure that the tank is structurally sound and free of corrosion holes (see page 14 for industry codes).
- You can assess the tank for corrosion holes by a method that the implementing agency determines is no less protective than those above. (For example, a national consensus code may be developed for assessing tank integrity without internal inspection.)

Only tanks proven to be structurally sound can have cathodic protection added to them.

■ **Second, install cathodic protection.** Regulations require a qualified cathodic protection expert to design, supervise installation, and inspect cathodic protection systems installed at the UST site. The system must be tested by a qualified cathodic protection tester within 6 months of installation and at least every 3 years thereafter. You will need to keep the results of the last two tests to prove that the cathodic protection is working. In addition, you must inspect an impressed current system every 60 days to verify that the system is operating. Keep results of your last three inspections to prove that the impressed current system is operating properly.

Using cathodic protection requires periodic tests and inspections, as well as consistent recordkeeping (see page 14 for industry codes).

*Only tanks proven
to be structurally
sound can be lined.*

2. **Add interior lining to the tank.** The interior of a tank can be lined with a thick layer of noncorrodible material (see page 14 for industry codes). Tanks using only an interior lining for corrosion protection must pass an internal reinspection in 10 years and every 5 years after that to make sure that the lining is sound. Keep records of the inspection results.

3. **Combine cathodic protection and interior lining.** You can add both cathodic protection and interior lining. The advantages for you of this combined method are simple: your USTs receive more cathodic protection; and you are not required to have the interior lining periodically inspected (which saves you the cost of these inspections). You will still need to have the cathodic protection system periodically tested and inspected and to keep records (as explained on page 9).

And what about piping?

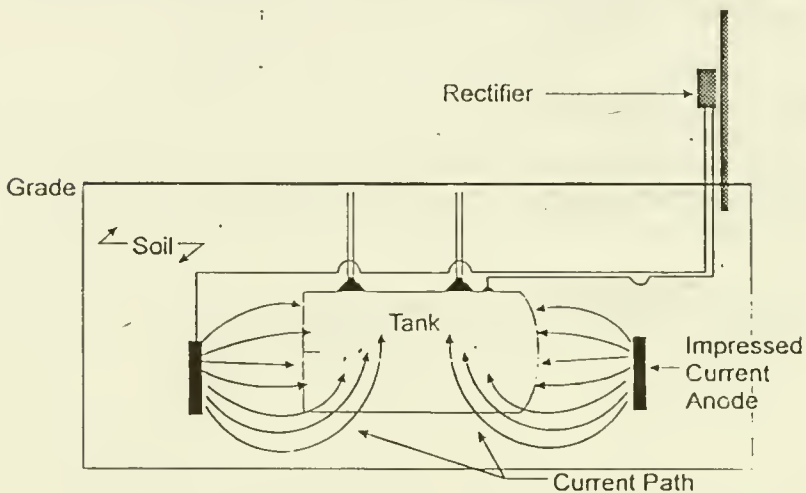
Existing steel piping must have cathodic protection. Note that cathodic protection needs to be tested and inspected periodically and records kept as described on page 9.

Piping entirely made of (or enclosed in) noncorrodible material, such as fiberglass, does not need cathodic protection.

What Are Cathodic Protection Methods?

IMPRESSED CURRENT SYSTEM

An impressed current system uses a rectifier to convert alternating current to direct current (see illustration below). This current is sent through an insulated wire to the "anodes," which are special metal bars buried in the soil near the UST. The current then flows through the soil to the UST system, and returns to the rectifier through an insulated wire attached to the UST. The UST system is protected because the current going to the UST system overcomes the corrosion-causing current normally flowing away from it.



For more information on corrosion and how USTs can be protected from it, contact NACE International (formerly the National Association of Corrosion Engineers) or other professionals in this field (see page 14).

SACRIFICIAL ANODE SYSTEM

Another type of cathodic protection (not illustrated here) is called a sacrificial anode or galvanic system. Although sacrificial anode systems work with new USTs, corrosion protection experts generally agree that *sacrificial anodes do not work effectively or economically with most existing steel USTs*. Only a qualified cathodic protection expert can determine what kind of cathodic protection will work at your UST site.

What If You Close Or Replace The UST?

If you do not upgrade your existing UST, then you must properly close it. After closing the UST, you may replace it by installing a new UST. Basically, federal rules require the following when closing or replacing an UST:

- Notify your regulatory authority at least 30 days before you take an UST out of service for closure or replacement. (The regulatory authority may want to monitor the actions you take.)
- Determine if releases from your UST have contaminated the surrounding environment. You can use the results of monthly vapor or groundwater monitoring to show that your site is not contaminated. Otherwise you will need to do a site assessment. *Check to see if your state requires additional closure assessment measures.* If you find contamination, you will have to take corrective action (see page 15 for ordering EPA's booklet on taking corrective action).
- Have the tank emptied of liquids, dangerous vapor levels, and accumulated sludge. These potentially very hazardous actions need to be carried out by trained personnel who carefully follow standard safety practices. After the tank has been properly emptied, you can have it removed. If you want to leave the UST in the ground, you must fill it with a harmless and chemically inactive solid. *However, you should check to see if your state requires removal of the UST.*

WARNING: *People are killed or injured every year while closing or removing tanks. Use safe removal practices (see page 14 for a safe closure standard). Only qualified contractors should close or remove USTs.*

What About Hazardous Substance USTs?

Several hundred substances are designated as "hazardous" in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, better known as CERCLA. The UST regulations apply to tanks that store the same hazardous substances identified by CERCLA, except for those listed as hazardous wastes. Information on CERCLA hazardous substances is available through EPA's RCRA/Superfund Hotline at 800 424-9346.

If your hazardous substance UST was installed before December 22, 1988, you have until December 22, 1998 to add spill, overfill, and corrosion protection (see pages 4-11). Otherwise, you must properly close the UST (see page 12). By this same date, hazardous substance USTs must also have leak detection systems that include secondary containment and interstitial monitoring. The leak detection system must be able to detect a leak in the interstitial space within 30 days of occurrence. (Some regulatory authorities may allow you to apply for permission to use another leak detection method.)

Secondary containment is created by placing a barrier inside or outside the tank and piping so that any leaks are contained within the space between the barrier and the tank and piping. This containment space is called the "interstitial space" and must be monitored for leaks. Methods that create an interstitial space for existing systems are currently limited in number and not available everywhere.

For more information on hazardous substance USTs, see "Musts for USTs" (ordering information on page 15).

PARTIAL LIST OF
HAZARDOUS SUBSTANCES

HAZARDOUS SUBSTANCE	CASRN*
Acetaphenone	81324
Acetaphenone	205948
Acetaldehyde	75070
Acetaldehyde, chloro-	107200
Acetaldehyde, trichloro-	75872
Chromic sulfite	10101538
Chromium	7440475
CHROMIUM AND COMPOUNDS	—
Chromous chloride	10049055
Chrysene	218019
Cobaltous bromide	7789437
Cobaltous formate	544183
Cobaltous sulfamate	14017413
Copper	7440508
Copper cyanide	544923
Fampbur	52857
Ferrous ammonium citrate	1185575
Ferrous ammonium oxalate	2944674
Ferrous chloride	7705380
Ferrous dextran	9004664
Ferrous fluoride	7783508
Ferrous nitrate	10421484
Ferrous sulfate	10028225
Keithane	115322
Kepon	143500
Lasiocarpic	303344
LEAD AND COMPOUNDS	—
Lead	7439921
Lead acetate	301042
Lead arsenate	7784409
Lead chloride	7758954
Lead fluoroborate	13814965
Lead iodide	10101650
Zinc nitrate	7779886
Zinc phosphate	127882
Zinc phosphide	1314447
Zinc silicofluoride	16871719
Zinc sulfate	7733020
Zirconium nitrate	13746899
Zirconium sulfate	14644612
Zirconium tetrachloride	10026116

* Chemical Abstracts Service Registry Number

NOTE: You may find the "Quick Compliance Checklist" on page 16 to be helpful.

ORGANIZATIONS TO CONTACT FOR TANK INFORMATION

API (American Petroleum Institute)
1220 L Street, N.W.
Washington, DC 20005
202 682-8000

ASTM (American Society for Testing and Materials)
1916 Race Street
Philadelphia, PA 19103
215 299-5585

Fiberglass Petroleum Tank and Pipe Institute
9801 Westheimer, Suite 606
Houston, TX 77042-3951
713 465-3310

NACE International (formerly the National Association of Corrosion Engineers)
Box 218340
Houston, TX 77218-8340
713 492-0535

National Fire Protection Association
1 Batterymarch Park
Box 9109
Quincy, MA 02269-9101
617 770-3000

NLPA (National Leak Prevention Association)
Box 1643
Boise, ID 83701
208 389-2074

PEI (Petroleum Equipment Institute)
Box 2380
Tulsa, OK 74101-2380
918 494-9696

STI (Steel Tank Institute)
570 Oakwood Road
Lake Zurich, IL 60047
708 438-8265

INDUSTRY CODES AND STANDARDS

Assessing Tank Integrity and Interior Lining of Tank

API Recommended Practice 1631 (1992), "Interior Lining of Underground Storage Tanks"

NLPA Standard 631 (1991), "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks"

[An ASTM consensus code may be published to standardize alternatives to internal inspections that assess tank integrity.]

Cathodic Protection

API Recommended Practice 1632 (1987), "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"

NACE RP-0169-92 (1992), "Recommended Practice: Control of Corrosion on External Underground or Submerged Metallic Piping Systems"

NACE RP-0285-85 (1985), "Recommended Practice: Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"

STI R892-91 (1991), "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems"

Closing USTs

API Recommended Practice 1604 (1987), "Removal and Disposal of Used Underground Petroleum Storage Tanks"

General

API Recommended Practice 1615 (1987).
"Installation of Underground Petroleum
Storage Systems"

PEI RP100-94 (1994), "Recommended
Practice for Installation of Underground
Liquid Storage Systems"

EPA PUBLICATIONS*Leak Detection Requirements*

"Straight Talk On Tanks: A Summary of
Leak Detection Methods for Petroleum
Underground Storage Tanks." To order this
free publication, call EPA's toll-free
RCRA/Superfund Hotline at 800 424-9346
and ask for EPA 530/UST-90/012.

*Installing New USTs and General
Information*

"Musts for USTs: A Summary of the
Regulations for Underground Storage Tank
Systems." Order from Superintendent of
Documents, Box 371954, Pittsburgh, PA
15250-7954; order #055-000-00294-1
(\$2.50 a copy).

Taking Corrective Action

"Oh No! Petroleum Leaks and Spills: What
Do You Do?" To order this free publication,
call EPA's toll-free RCRA/Superfund Hotline
at 800 424-9346 and ask for EPA
530/UST-88/004.

Tank Filling

"Keeping It Clean: Making Safe and Spill-
Free Motor Fuel Deliveries." For ordering
information call EPA's toll-free
RCRA/Superfund Hotline at 800 424-9346
(video costs about \$60).

Closure

"Tank Closure Without Tears" and "What
Do We Have Here?" Videos and companion
booklets available (\$20 to \$45) from New
England Interstate Water Pollution Control
Commission, ATTN: VIDEOS, 2 Fort Road,
South Portland, ME 04106.

Quick Compliance Checklist

You should be in compliance with the "upgrade" requirements if you can check off the major items below for each of your *existing* UST systems by December 1998:

- Spill protection provided by a catchment basin
- Overfill protection provided by an automatic shutoff device, overfill alarm, or ball float valve
- Corrosion protection for the tank provided by one of the following:
 - Steel tank has corrosion-resistant coating AND cathodic protection
 - Tank made of noncorrodible material (such as fiberglass)
 - Steel tank clad with (or enclosed in) noncorrodible material
 - Uncoated steel tank has cathodic protection system
 - Uncoated steel tank has interior lined with noncorrodible material
 - Uncoated steel tank has cathodic protection AND interior lined with noncorrodible material steel tank
- Corrosion protection for piping provided by one of the following:
 - Uncoated steel piping has cathodic protection
 - Steel piping has a corrosion-resistant coating AND cathodic protection
 - Piping made of (or enclosed in) noncorrodible material
- If you have decided not to upgrade your *existing* UST system with the items above, you have properly closed the UST system. If you subsequently install a new UST system, the new installation meets all the regulatory requirements for installations after December 22, 1988.



UST Program Facts

Overview Of The UST Program

What's an "UST"?

An underground storage tank system (UST) is a tank and any underground piping connected to the tank that has at least 10 percent of its combined volume underground. The federal UST regulations apply only to underground tanks and piping storing either petroleum or certain hazardous substances.

The U.S. Environmental Protection Agency (EPA) estimates that there are about 1.2 million federally regulated USTs buried at over 500,000 sites nationwide. Nearly all USTs at these sites contain petroleum. These sites include marketers who sell gasoline to the public (such as service stations and convenience stores) and nonmarketers who use tanks solely for their own needs (such as fleet service operators and local governments). Only about 30,000 tanks hold hazardous substances covered by the UST regulations.

Why be concerned about USTs?

Until the mid-1980s, most USTs were made of bare steel, which is likely to corrode over time and allow UST contents to leak into the environment. Faulty installation or inadequate operating and maintenance procedures also can cause USTs to release their contents into the environment.

The greatest potential hazard from a leaking UST is that the petroleum or other hazardous substance can seep into the soil and contaminate groundwater, the source of drinking water for nearly half of all Americans. A leaking UST can present other health and environmental risks, including the potential for fire and explosion.

How have Congress and EPA responded to concerns about USTs?

In 1984, Congress responded to the increasing threat to groundwater posed by leaking USTs by adding Subtitle I to the Resource Conservation and Recovery Act (RCRA). Subtitle I required EPA to develop a comprehensive regulatory program for USTs storing petroleum or certain hazardous substances.

Congress directed EPA to publish regulations that would require owners and operators of new tanks and tanks already in the ground to prevent, detect, and clean up releases. At the same time, Congress banned the installation of unprotected steel tanks and piping beginning in 1985.

In 1986, Congress amended Subtitle I of RCRA and created the Leaking Underground Storage Tank Trust Fund, which is to be used for two purposes:

- To oversee cleanups by responsible parties.
- To pay for cleanups at sites where the owner or operator is unknown, unwilling, or unable to respond, or which require emergency action.

The 1986 amendments also established financial responsibility requirements. Congress directed EPA to publish regulations that would require UST owners and operators to demonstrate they are financially capable of cleaning up releases and compensating third parties for resulting damages.

Do all tanks have to meet EPA regulations?

The following USTs are excluded from regulation and, therefore, do not need to meet federal requirements for USTs:

- Farm and residential tanks of 1,100 gallons or less capacity holding motor fuel used for noncommercial purposes;
- Tanks storing heating oil used on the premises where it is stored;
- Tanks on or above the floor of underground areas, such as basements or tunnels;
- Septic tanks and systems for collecting storm water and wastewater;
- Flow-through process tanks;
- Tanks of 110 gallons or less capacity; and
- Emergency spill and overfill tanks.

What are the federal requirements for USTs?

In 1988, EPA issued regulations setting minimum standards for new tanks and requiring owners of existing tanks to upgrade, replace, or close them. The UST regulations are divided into three sections: technical requirements, financial responsibility requirements, and state program approval objectives.

Technical requirements

EPA's technical regulations for USTs are designed to reduce the chance of releases from USTs, detect leaks and spills when they do occur, and secure a prompt cleanup. To meet the requirements, owners must upgrade, replace, or close existing UST systems by 1998. Tanks remaining in operation must have leak detection and leak prevention components. UST owners and operators are responsible for reporting and cleaning up any releases. (See the other fact sheets in this series on "Preventing Releases," "Detecting Releases," and "Cleaning Up Releases.")

Financial responsibility regulations

The financial responsibility regulations ensure that, in the event of a leak or spill, an owner or operator will have the resources to pay for costs associated with cleaning up releases and compensating third parties. (See the "Financial Responsibility" fact sheet in this series.)

State program approval objectives

EPA recognizes that, because of the large size and great diversity of the regulated community, state and local governments are in the best position to oversee USTs. Subtitle I of RCRA allows state UST programs approved by EPA to operate in lieu of the federal program, and EPA's state program approval regulations set standards for state programs to meet. (See the "State UST Programs" fact sheet in this series.)

States may have more stringent regulations than the federal requirements. People who are interested in requirements for USTs should contact their state UST program for information on state requirements.

"Overview of the UST Program" is one in a series of fact sheets about underground storage tanks (USTs) and leaking USTs. The series is designed to help EPA, other federal officials, and state authorities answer the most frequently asked questions about USTs with consistent, accurate information in plain language. Keep the fact sheets handy as a resource. This fact sheet addresses federal regulations. You may need to refer to applicable state or local regulations, as well. For more information on UST publications, call the RCRA/Superfund Hotline at 800 424-9346.



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UST Program Facts

Leaking Underground Storage Tank Trust Fund

What is the "LUST" Trust Fund?

Congress created the Leaking Underground Storage Tank (LUST) Trust Fund in 1986 by amending Subtitle I of the Resource Conservation and Recovery Act. In December 1990, Congress reauthorized the Trust Fund for five more years.

The LUST Trust Fund has two purposes. First, it provides money for overseeing corrective action taken by a responsible party, who is usually the owner or operator of the leaking underground storage tank (UST). Second, the Trust Fund provides money for cleanups at UST sites where the owner or operator is unknown, unwilling, or unable to respond, or which require emergency action.

What's in the Trust Fund?

The Trust Fund is financed by a 0.1 cent tax on each gallon of motor fuel sold in the country. As of May 1994, about \$1.2 billion had been collected.

Of this amount, Congress has given \$475 million to the U.S. Environmental Protection Agency (EPA) through fiscal year 1994. About \$410 million—or 86 percent of the amount given to EPA—has been dispersed to state programs for state officials to use for administration, oversight, and cleanup work.

The remaining Trust Fund money—about \$65 million or 14 percent of the total—has been used by EPA for administrative activities: negotiating and overseeing cooperative agreements; implementing programs on Indian lands; and supporting regional and state offices.

How does the Trust Fund work?

To receive money from the Trust Fund, a state must enter into a cooperative agreement with the federal government to spend the money for its intended purpose. Every state except Florida (which has its own state cleanup fund) has a cooperative agreement with EPA.

The money is divided among EPA regional offices based on a formula that uses state data. In fiscal year 1994, each state received a base allocation plus additional money depending on the following: the number of confirmed releases in the state; the number of notified petroleum tanks; the number of residents relying on groundwater for drinking water; and the number of cleanups initiated and completed as a percent of total confirmed releases.

How do states use Trust Fund money?

States use Trust Fund money to oversee corrective action by a responsible party and to clean up sites where no responsible party can be found. Only about 1 percent of all cases have been without a responsible party.

To date, states have used about one-third of their Trust Fund money for administration, one-third for oversight and state-lead enforcement activities, and one-third for cleanups.

How many USTs are leaking?

As of July 1994, EPA, states, and local agencies have confirmed more than 262,000 UST releases. Over the next several years, EPA expects more

than another 100,000 confirmed releases to be reported, primarily releases discovered during the replacement or closure of USTs. After this peak, EPA expects fewer additional releases as USTs comply with requirements.

How much do cleanups cost?

Cleanup costs depend on a variety of factors, including the extent of contamination and state cleanup standards. The average cleanup is estimated to cost \$125,000.

If only a small amount of soil needs to be removed or treated, cleanup costs can run as low as \$10,000. However, costs to clean more extensive soil contamination can reach \$125,000. Corrective action for leaks that affect groundwater can cost from \$100,000 to over \$1 million, depending on the extent of contamination.

What cleanup activities have taken place?

As of July 1994, states have used Trust Fund and state money to:

- Confirm more than 262,000 releases,
- Oversee or conduct more than 7,800 emergency responses,
- Oversee or initiate more than 202,000 cleanups,
- Oversee or complete more than 101,000 cleanups, and
- Oversee or conduct more than 892,000 closures.

"Leaking Underground Storage Tank Trust Fund" is one in a series of fact sheets about underground storage tanks (USTs) and leaking USTs. The series is designed to help EPA, other federal officials, and state authorities answer the most frequently asked questions about USTs with consistent, accurate information in plain language. Keep the fact sheets handy as a resource. This fact sheet addresses federal regulations. You may need to refer to applicable state or local regulations, as well. For more information on UST publications, call the RCRA/Superfund Hotline at 800 424-9346.



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UST Program Facts

Preventing Releases

How can releases be prevented?

The U.S. Environmental Protection Agency designed part of the technical regulations for underground storage tanks (USTs) to prevent releases from USTs. The regulations require USTs to be protected from spills, overfills, and corrosion. Spills and overfills result from bad filling practices. Unprotected steel tanks and piping corrode and release product through corrosion holes. A free booklet explaining these requirements can be obtained by calling the toll-free RCRA/Superfund Hotline at 800 424-9346 and asking for "Don't Wait Until 1998" (publication number 510-B-94-002).

What is spill protection?

Many releases at UST sites come from spills made during delivery. Human error causes most spills, which can be avoided by following standard tank filling practices. In addition, USTs must have catchment basins to contain spills. Basically, a catchment basin is a bucket sealed around the fill pipe. USTs installed after December 22, 1988 must have catchment basins when they are installed. USTs installed before December 1988 must add catchment basins by December 1998 or properly close.

What is overfill protection?

When a tank is overfilled, large volumes can be released at the fill pipe and through loose fittings on the top of the tank or a loose vent pipe. Overfills can be avoided by good filling practices and the installation of overfill protection devices. USTs must have one of the following devices that guard against overfills: automatic shutoff devices, overfill alarms, or ball float valves. USTs installed after December 22, 1988 must have overfill protection devices when they are installed. USTs installed before December 1988 must add overfill protection devices by December 1998 or properly close.

What is corrosion protection?

Unprotected steel USTs corrode and release product through corrosion holes. All USTs installed after December 22, 1988 must meet one of the following performance standards for corrosion protection:

- Tank and piping completely made of noncorrodible material, such as fiberglass.
- Tank and piping made of steel having a corrosion-resistant coating AND having cathodic protection. (Cathodic protection is described below.)
- Tank made of steel clad with a thick layer of noncorrodible material (this option does not apply to piping).

USTs must also be designed, constructed, and installed in accordance with a national code of practice.

What about USTs installed earlier?

USTs installed before December 1988 must have corrosion protection by December 1998. These USTs must meet one of the corrosion protection standards listed above, meet one of the upgrade options described below, or close properly. Use ONE of the following THREE options to add corrosion protection to existing steel tanks:

Add cathodic protection

Add cathodic protection to a tank that has been proven to be structurally sound. Cathodic protection can be provided by adding an impressed current system that protects the UST by introducing an electrical current into the soil around the UST. Cathodic protection systems need to be periodically inspected and tested.

Add interior lining

Add a thick layer of noncorrodible material to the interior of the tank. This interior lining must be periodically inspected.

Combine cathodic protection and interior lining

Combine cathodic protection and interior lining. USTs using this option are not required to have the interior lining periodically inspected.

What about piping?

Steel piping must have cathodic protection. Piping entirely made of (or enclosed in) noncorrodible material does not need cathodic protection.

How do you properly close an UST?

To properly close an UST:

- Notify the regulatory authority 30 days before closing.
- Determine if the tank has leaked and damaged the environment. If it has, take appropriate notification and corrective action.
- Empty and clean the UST according to standard safety practices.
- Either remove the UST from the ground or leave it in the ground (USTs left in the ground must be filled with a harmless and chemically inactive solid).

Are there reporting and recordkeeping requirements?

UST owners must notify state or local authorities of the existence of an UST and its leak prevention measures, or of the permanent closure of an UST. Technical regulations also set guidelines for notifying authorities of spills of more than 25 gallons.

Owners and operators must also keep records on:

- Inspection and test results for the cathodic protection system.
- Repairs or upgrades.
- Site assessment results after closure...

Is there financial help to comply with prevention requirements?

Some states have established financial assistance programs that can provide funds or low-interest loans to help owners upgrade or replace their tanks.

"Preventing Releases" is one in a series of fact sheets about underground storage tanks (USTs) and leaking USTs. The series is designed to help EPA, other federal officials, and state authorities answer the most frequently asked questions about USTs with consistent, accurate information in plain language. Keep the fact sheets handy as a resource. This fact sheet addresses federal regulations. You may need to refer to applicable state or local regulations, as well. For more information on UST publications, call the RCRA/Superfund Hotline at 800 424-9346.



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UST Program Facts

Detecting Releases

Why have release detection?

The U. S. Environmental Protection Agency designed part of the technical regulations for underground storage tanks (USTs) to make sure releases or "leaks" from USTs are discovered quickly before contamination spreads from the UST site. Owners and operators are responsible for detecting leaks from their tanks and piping.

Who needs leak detection?

All USTs must now have leak detection. USTs installed after December 22, 1988 must have leak detection when they are installed. USTs installed before December 22, 1988 had compliance deadlines that varied with the age of the USTs. By December 22, 1993, all of these "older" USTs had to be in compliance with leak detection requirements.

What are the leak detection methods?

Owners and operators of petroleum USTs must use at least one of the seven leak detection methods below, or other methods approved by their state agency.

1. Automatic tank gauging systems use monitors permanently installed in the tank. These monitors are linked electronically to a nearby control device to provide information on product level and temperature. During a test period of several hours when nothing is put into or taken from the tank, the gauging system automatically calculates the changes in product volume that can indicate a leaking tank. This method does not work on piping.

2. Groundwater monitoring senses the presence of liquid product floating on the groundwater. This method requires installation of monitoring wells at strategic locations in the ground near the tank and along the piping runs. To discover if leaked product

has reached groundwater, these wells can be checked periodically by hand or continuously with permanently installed equipment. This method is effective only at sites where groundwater is within 20 feet of the surface.

3. Vapor monitoring senses and measures product vapor in the soil around the tank and piping to determine the presence of a leak. This method requires installation of carefully placed monitoring wells. Vapor monitoring can be performed periodically using manual devices or continuously using permanently installed equipment.

4. Secondary containment and interstitial monitoring involves placing a barrier between the UST and the environment. The barrier provides "secondary" containment and can be a vault, liner, or double-walled structure. Leaked product from the UST is directed toward a monitor located in the "interstitial" space between the UST and the outer barrier. Interstitial monitoring methods range from a simple dip stick to automated vapor or liquid sensors permanently installed in the system. New USTs holding hazardous substances must use this method.

5. Statistical inventory reconciliation uses sophisticated computer software to determine whether a tank system is leaking. The computer conducts a statistical analysis of inventory, delivery, and dispensing data collected over a period of time and provided by the operator to a vendor.

6. Manual tank gauging can be used only on tanks 2,000 gallons or smaller. This method does NOT work on tanks larger than 2,000 gallons or on piping. This method requires taking the tank out of service for at least 36 hours each week to take measurements of the tank's contents. Tanks 1,000 gallons or less can use this method alone. Tanks from 1,001-2,000 gallons can use this method only when it is combined with periodic tank tightness

testing and only for 10 years after installation or upgrade of the UST. After 10 years, these USTs must use one of the leak detection methods listed above in 1-5.

The additional method below can be used temporarily at all petroleum UST sites:

7. Tank tightness testing and inventory control combines two methods. Tank tightness testing requires periodic tests conducted by vendors who temporarily install special equipment that tests the soundness of the tank. Tank tightness testing must be used in combination with inventory control. Inventory control is an ongoing accounting system, like a checkbook, kept by the UST owner or operator to detect leaks. Inventory control requires taking daily accurate measurements of the tank's contents and performing monthly calculations to prove that the system is not leaking. Tank tightness testing and inventory control can be used only for 10 years after installation or upgrade of an UST. After 10 years, these USTs must use one of the leak detection methods listed above in 1-5.

What does piping need?

Pressurized piping needs automatic line leak detectors (these can be automatic flow restrictors, automatic flow shutoffs, or continuous alarm systems). Pressurized piping also needs one of the following: groundwater monitoring, vapor monitoring, secondary containment and interstitial monitoring, or an annual tightness test of the piping.

Suction piping needs no leak detection if it meets two design requirements: 1) piping slopes so that the product drains back into the tank when suction is released, and 2) piping has only one check valve located closely beneath the pump in the dispensing unit. Suction piping not meeting these design requirements must use one of the following: tightness test of the piping every 3 years, groundwater monitoring, vapor monitoring, or secondary containment and interstitial monitoring.

Reporting and recordkeeping necessary?

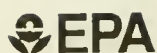
UST owners and operators need to report to the regulatory authority data about the UST, including

description of the leak detection method. If operation of the leak detection method indicates a possible leak, UST owners and operators need to report the potential release to the regulatory authority. UST owners and operators must keep records on leak detection performance and upkeep. These include the previous year's monitoring results, the most recent tightness test results, performance claims by the leak detection device's manufacturer, and records of recent maintenance and repair.

"Detecting Releases" is one in a series of fact sheets about underground storage tanks (USTs) and leaking USTs. The series is designed to help EPA, other federal officials, and state authorities answer the most frequently asked questions about USTs with consistent, accurate information in plain language. Keep the fact sheets handy as a resource. This fact sheet addresses federal regulations. You may need to refer to applicable state or local regulations, as well. For more information on UST publications, call the RCRA/Superfund Hotline at 800 424-9346.



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UST Program Facts

Cleaning Up Releases

What is the cleanup program?

In Subtitle I of the Resource Conservation and Recovery Act, Congress directed the U.S. Environmental Protection Agency (EPA) to establish regulatory programs that would prevent, detect, and clean up releases from underground storage tank systems (USTs). EPA regulations require UST owners and operators to respond to a release by:

- Reporting a release,
- Removing its source,
- Mitigating fire and safety hazards,
- Investigating the extent of the contamination, and
- Cleaning up soil and groundwater as needed to protect human health and the environment.

EPA developed the UST regulations and program to be flexible and to be implemented by state and local agencies. Every state and many local governments now have active UST cleanup programs.

How many releases need attention?

As of July 1994, more than 262,000 UST releases had been confirmed. As the graphic on the next page shows, many of these releases have been cleaned up, but much work remains to be done. The number of new releases reported continues to outpace the number of sites cleaned up.

EPA estimates that the total number of confirmed releases could reach 400,000 in the next several years, primarily releases discovered during the closure or replacement of USTs. After this peak, EPA expects fewer releases as USTs comply with requirements.

Currently, state and local UST cleanup program staff oversee an increasing caseload of active cleanups. State staff frequently have 50–400 cases to manage at any given time. Staff work is often further complicated by administrative bottlenecks in oversight processes. At the same time, state staff face an increasing backlog of sites awaiting response.

Increasing caseloads, administrative bottlenecks, backlogged sites, and staff overload slow down cleanup responses. Over time, release sites in the planning stages of corrective action and those awaiting a response gradually become more difficult and costly to clean up. Regulators have difficulty finding the time necessary to perform inspections and review corrective action plans. Delays in the cleanup process disrupt businesses and make cleanups more expensive for many owners, particularly small businesses.

Can streamlining and alternative technologies help?

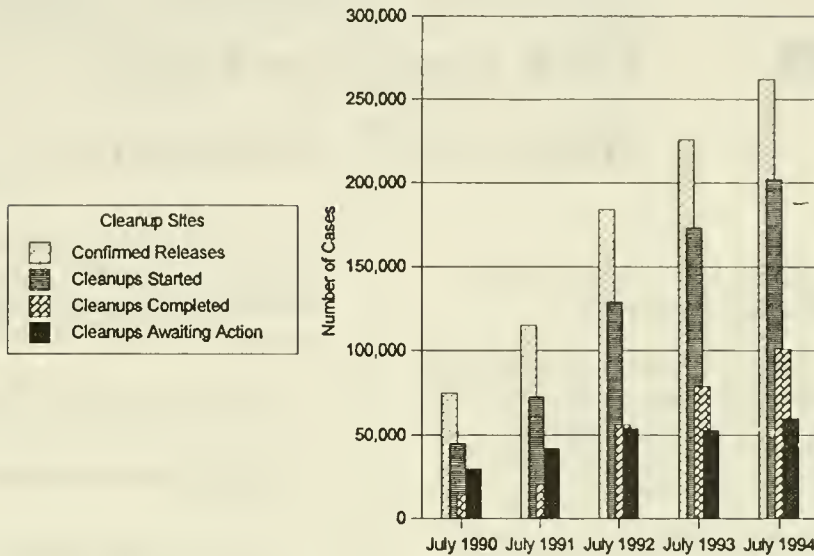
One of EPA's top priorities in the UST program is to help state and local governments make cleanups faster, cheaper, and more effective. Two approaches being used to reach this goal are streamlining administrative procedures and using alternative cleanup technologies.

Streamlining

EPA staff and consultants help states to streamline cleanup oversight processes:

- They teach Total Quality Management techniques to help identify delays and other opportunities for improvement.
- They show state managers and staff how to use flowcharts and performance indicators to document, analyze, and improve their programs.

Growing Number Of Cleanup Sites



- They support state managers and staff in streamlining efforts: developing clear guidance materials and hosting "consultants days" to improve the quality of cleanup plans and reports; designing process changes that reduce delays and paperwork; and providing training that enables people to perform more efficiently.

Alternative Technologies

In cooperative efforts with contractors, consultants, tank owners, and states, EPA is also working to promote the use of alternatives to traditional site assessment and cleanup technologies. Even though some promising technologies—such as air sparging, bioremediation, and low temperature thermal desorption—have proven advantageous in field applications, they are not yet widely used across the country. EPA is using a variety of training, demonstration, and outreach projects to increase the acceptance and use of technologies that can help make cleanups faster, less costly, or more effective.

Are EPA's efforts helping?

By streamlining cleanup oversight processes and promoting wider use of alternative technologies for site assessment and cleanup, many states have made

improvements. States have reduced delays in permitting, site assessment, corrective action, and reimbursement processes. States are providing clearer guidance to consultants and contractors, which is resulting in better plans and reports, speeding up the work, and cutting paperwork costs. As training and demonstration projects progress, alternative technologies such as soil vapor extraction, air sparging, and bioremediation are being used more often.

"Cleaning Up Releases" is one in a series of fact sheets about underground storage tanks (USTs) and leaking USTs. The series is designed to help EPA, other federal officials, and state authorities answer the most frequently asked questions about USTs with consistent, accurate information in plain language. Keep the fact sheets handy as a resource. This fact sheet addresses federal regulations. You may need to refer to applicable state or local regulations, as well. For more information on UST publications, call the RCRA/Superfund Hotline at 800 424-9346.



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UST Program Facts

State UST Programs

What is the role of states in regulating underground storage tanks?

The U.S. Environmental Protection Agency (EPA) recognizes that, because of the size and diversity of the regulated community, state and local governments are in the best position to oversee underground storage tanks (USTs):

- State and local authorities are closer to the situation in their domain and are in the best position to set priorities.
- Subtitle I of the Resource Conservation and Recovery Act (RCRA) allows state UST programs approved by EPA to operate in lieu of the federal program.
- The state program approval regulations set criteria for states to obtain the authority to operate in lieu of the federal program. State programs must be at least as stringent as EPA's.

How do states receive program approval?

EPA's regional offices coordinate the state program approval process for states and territories under their jurisdiction. Ultimately, they approve the programs, following federal standards.

EPA regional officials work closely with state officials while state programs are under development. Once state legislatures enact statutes and state agencies develop regulations in accord with EPA requirements and put other necessary components of a program in place, states may apply for formal approval. EPA must respond to applications within 180 days.

A state program is approved if it is judged to meet three criteria:

- It sets standards for eight performance criteria that are no less stringent than federal standards.
- It contains provisions for adequate enforcement.
- It regulates at least the same USTs as are regulated under federal standards.

Which states have approved programs?

Fourteen states have approved programs: Georgia, Kansas, Louisiana, Maine, Maryland, Mississippi, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, Vermont, and Washington.

Which states may be next?

Since EPA regulations went into effect, cleanup has been a priority for many states. Increasingly, states are making program approval a priority. A total of 23 states have submitted drafts of state program approval applications which EPA regional officials are currently reviewing.

What are the benefits of state program approval?

Because state programs operate in lieu of the federal program, states that have an approved UST program can eliminate an entire set of government regulators from their regulated community. Owners and operators do not have to deal with two sets of statutes and regulations (state and federal) that may be conflicting. States take pride in obtaining federal approval of their programs.

Once their programs are approved, states will have the lead role in UST program enforcement. In states without an approved program, EPA will work with state officials in coordinating UST enforcement actions.

Need more information about a particular state's program?

Contact the EPA regional office or the UST/LUST program in your state, usually located in the state environmental department. Program staff will provide information or referrals.

"State UST Programs" is one in a series of fact sheets about underground storage tanks (USTs) and leaking USTs. The series is designed to help EPA, other federal officials, and state authorities answer the most frequently asked questions about USTs with consistent, accurate information in plain language. Keep the fact sheets handy as a resource. This fact sheet addresses federal regulations. You may need to refer to applicable state or local regulations, as well. For more information on UST publications, call the RCRA/Superfund Hotline at 800 424-9346.



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UST Program Facts

Environmental Justice

What is environmental justice?

Over the last decade, concern about the impact of environmental pollution on particular populations has been growing. Low income and minority communities, for example, may bear disproportionately high and adverse risk to human health and the environment from pollution. Compounding the problem, these communities often lack the legal means necessary to effectively organize political activities on their own behalf. These concerns have resulted in a movement to assure environmental justice for all populations.

What is EPA doing?

Early in her tenure, Administrator Carol Browner of the U. S. Environmental Protection Agency (EPA) designated the pursuit of environmental justice one of the Agency's top priorities. EPA's Office of Solid Waste and Emergency Response formed a task force in November 1993 to analyze environmental justice issues specific to waste programs and to develop recommendations addressing these issues. In February 1994, President Clinton signed an Executive Order on Environmental Justice which focused federal agencies' attention on environmental justice issues. In response, EPA is currently developing an Agencywide strategy for environmental justice.

Is there an environmental justice issue for UST programs?

Underground storage tanks (USTs) are everywhere: in cities, towns, and rural areas. Federal regulations cover more than 1 million petroleum USTs at facilities across the nation. Federal and state UST programs are ensuring that the large universe of regulated USTs meets all technical requirements for

preventing and detecting leaks and that cleanups keep pace with the growing number of confirmed releases.

No matter where they are located, leaking USTs can threaten drinking water supplies or cause explosive vapors to accumulate in sewers or basements. These threats in all cases must be met with quick emergency response.

However, USTs that leak in communities facing potential pollution from other sources (such as landfills, concentrated sources of air emissions, hazardous waste treatment facilities, or Superfund sites) can add to cumulative human health risk. When all other factors are equal, leaking USTs in communities facing exposure to multiple environmental risks should receive priority attention.

UST program officials must ensure that leaking USTs are brought under control as quickly as possible in all communities, including economically disadvantaged and minority communities.

How can UST programs address environmental justice concerns?

The federal UST program is engaged in several activities:

- Distributing information on environmental justice to states, tribes, and local agencies.
- Incorporating environmental justice criteria into state UST grants and cooperative agreements. Guidance may include, for example, specific clauses requiring states to consider environmental justice as they develop cleanup and compliance/enforcement strategies.

- Continuing efforts on Indian lands to identify existing USTs, including hazardous substance USTs and abandoned tanks.
- Working to develop tribal capacity on Indian lands by providing funds and technical assistance to tribal governments.
- Encouraging the use of minority contractors and consultants for tank installation and removal and for state-lead cleanups to broaden economic redevelopment efforts in disadvantaged communities.

State UST programs are being encouraged to:

- Consider environmental justice as a qualitative factor when developing priority ranking systems for state-lead cleanup and enforcement strategies.
- Use qualified minority contractors and consultants on state-lead cleanups.
- Encourage minority contractors to apply for certification and ensure that minority firms are represented on any contractor lists that the state provides to the regulated community.
- Develop and distribute information materials on USTs and leaking USTs to their regulated communities, including minority populations.

Need more information on environmental justice?

To learn more about environmental justice, contact EPA's toll-free number for concerned citizens at 800 962-6215, or call the EPA Regional Coordinator for your state. EPA's Office of Environmental Justice 202 260-6357 can provide regional contacts and telephone numbers.

"Environmental Justice" is one in a series of fact sheets about underground storage tanks (USTs) and leaking USTs. The series is designed to help EPA, other federal officials, and state authorities answer the most frequently asked questions about USTs with consistent, accurate information in plain language. Keep the fact sheets handy as a resource. This fact sheet addresses federal regulations. You may need to refer to applicable state or local regulations, as well. For more information on UST publications, call the RCRA/Superfund Hotline at 800 424-9346.



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UST Program Facts

Financial Responsibility

What are financial responsibility requirements?

When Congress amended Subtitle I of the Resource Conservation and Recovery Act in 1986, it directed the U.S. Environmental Protection Agency (EPA) to develop financial responsibility regulations for owners and operators of underground storage tanks.

Congress wanted owners and operators of underground storage tanks (USTs) to show that they have the financial resources to clean up a site if a release occurs, correct environmental damage, and compensate third parties for injury to their property or themselves. The amount of coverage required depends on the type and size of the business, as explained in the chart at the end of this fact sheet.

How can owners and operators demonstrate financial responsibility?

Owners and operators have several options: obtain commercial environmental impairment liability insurance; demonstrate self-insurance; obtain guarantees, surety bonds, or letters of credit; place the required amount into a trust fund administered by a third party; or rely on coverage provided by a state financial assurance fund. Local governments have four additional compliance mechanisms tailored to their special characteristics: a bond rating test, a financial test, a guarantee, and a dedicated fund.

When is financial responsibility required?

The chart at the end of this fact sheet presents five groups of UST owners and operators, compliance deadlines for each group, and required coverage amounts.

What is the cost of demonstrating financial responsibility?

EPA acknowledges that the cost of complying with the technical and financial responsibility requirements will be a burden to some owners and operators, especially those with older tanks.

Because underwriting criteria for most private insurance and eligibility requirements for some state assurance funds require that tanks be in compliance with federal or state technical standards, many owners and operators are faced with the costs of meeting technical requirements at the same time they meet financial responsibility costs.

The cost of meeting technical requirements generally accounts for the majority of regulatory compliance costs incurred by UST owners and operators. Some states have established financial assistance programs that can provide funds or low-interest loans to help owners meet technical requirements.

In terms of the costs for meeting financial responsibility requirements, insurance premiums for a facility with three to five upgraded tanks usually run about \$1,500 per year. Owners and operators who participate in a state financial assurance fund generally pay annual tank fees of from \$100 to \$250 per tank.

In developing the regulations, EPA has been sensitive to the financial impact of the regulations on small business. EPA phased in compliance deadlines, allowing the smallest businesses the longest time to comply. It has since responded to business owners' concerns by delaying compliance dates for the smallest owners and operators. EPA also has worked with states to develop state financial assurance funds and grant and loan programs.

How can state financial assurance funds help?

States are developing financial assurance funds to reduce the economic hardship of compliance with financial responsibility requirements and to help cover the costs of cleanups. State financial assurance fund programs, which supplement or are a substitute for private insurance, have been especially useful for small-to-medium sized petroleum marketers. Other characteristics of the funds appear below:

- Financial assurance funds are created by state legislation and must be submitted to EPA for approval before they can be used as compliance mechanisms.
- In most cases, states generate money for the funds with tank registration and petroleum fees.
- Legislatures delegate authority for the fund to a state agency addressing health, environmental, or insurance issues.
- State assurance funds typically incorporate eligibility requirements, such as demonstrations that facilities are in compliance with technical requirements and evidence of satisfactory inventory control and recordkeeping.
- Most state funds contain some deductible that the owner or operator is responsible for paying. Details on the funds are specific to each state.

Nationwide, these state funds raise about \$1 billion annually.

How many states have financial assurance funds?

As of July 1994, 33 states had state financial assurance fund plans approved by EPA. Ten had submitted fund plans for approval and three had plans that they had not submitted for approval. One additional state (Washington) has a reinsurance program that enables insurance companies to offer lower-cost premiums to the state's UST owners.

"Financial Responsibility" is one in a series of fact sheets about underground storage tanks (USTs) and leaking USTs. The series is designed to help EPA, other federal officials, and state authorities answer the most frequently asked questions about USTs with consistent, accurate information in plain language. Keep the fact sheets handy as a resource. This fact sheet addresses federal regulations. You may need to refer to applicable state or local regulations, as well. For more information on UST publications, call the RCRA/Superfund Hotline at 800 424-9346.

Financial Responsibility Requirements

Group Of UST Owners And Operators	Compliance Deadline	Per Occurrence Coverage	Aggregate Coverage
GROUP 1: Petroleum marketers with 1,000 or more tanks OR Nonmarketers with net worth of \$20 million or more (for nonmarketers, the "per occurrence" amount is the same as Group 4-B below)	January 1989	\$1 million	\$1 million if you have 100 or fewer tanks OR \$2 million if you have more than 100 tanks
GROUP 2: Petroleum marketers with 100-999 tanks	October 1989		
GROUP 3: Petroleum marketers with 13-99 tanks	April 1991		
GROUP 4-A: Petroleum marketers with 1-12 tanks	December 1993		
GROUP 4-B: Nonmarketers with net worth of less than \$20 million	December 1993	\$500,000 if throughput is 10,000 gallons monthly or less	OR \$1 million if throughput is more than 10,000 gallons monthly
GROUP 4-C: Local governments (including Indian tribes not part of Group 5)	February 1994	OR	
GROUP 5: Indian tribes owning USTs on Indian lands (USTs must be in compliance with UST technical requirements)	December 1998	\$1 million if throughput is more than 10,000 gallons monthly	

RECOGNIZING INNOCENT LAND PURCHASERS UNDER SUPERFUND

Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), a person who owns property at the time hazardous substances are disposed of, is liable for the cost of cleanup. Additionally, the current owner of contaminated land is liable. However, if that current owner can show that he acquired the property without knowing, or having reason to know, that hazardous substances have been disposed of there, he has a defense to Superfund liability under the current statute. In addition to the statutory protection for "innocent landowners", EPA as part of its Brownfields efforts, issued new Agency guidelines for entering into agreements with prospective purchasers of contaminated property (attached). The agreements provide a promise from EPA not to sue the prospective purchaser for contamination existing at the time of purchase.

MEMORANDUM

SUBJECT:Guidance on Agreements with Prospective Purchasers of Contaminated Property

FROM:Steven A. Herman, Assistant Administrator
Office of Enforcement and Compliance Assurance

TO:Regional Administrators, Regions I - X
Regional Counsel, Region I - X
Waste Management Division Directors, Regions I - X

This memorandum transmits the guidance and model agreement concerning prospective purchasers of contaminated Superfund property. The attached guidance supersedes the Agency policy issued in June 1989, entitled "Guidance on Landowner Liability under Section 107(a) of CERCLA, De Minimis Settlements under Section 122(g)(1)(B) of CERCLA, and Settlements with Prospective Purchasers of Contaminated Property" (OSWER Directive No. 9835.9 and 54 F.R. 34235 (Aug. 18, 1989)). The 1989 guidance limited the use of these covenants to situations where the Agency planned to take an enforcement action, and where the Agency received a substantial benefit for cleanup of the site by the purchaser, not otherwise available. In an effort to promote cleanup for the beneficial reuse and development of these properties, EPA is expanding the circumstances under which it will consider entering into prospective purchaser agreements.

Additional information on this policy is available from Lori Boughton ((703) 603-8959) or Elisabeth Freed ((703) 603-8936) in the Office of Site Remediation Enforcement. Information regarding the model agreement and site specific inquiries should be directed to Helen Keplinger ((202) 260-7116) in the Office of Site Remediation Enforcement.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION ____

IN THE MATTER OF: [name]

[Docket Number]

UNDER THE AUTHORITY OF THE)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL)	NOT TO SUE [Insert
RESPONSE, COMPENSATION, AND)	Settling Respondent's
LIABILITY ACT OF 1980, 42 U.S.C.)	Name]
§ 9601, <u>et seq.</u> , as amended.)	
[state law, if appropriate])	

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") [state of ____] and _____ [insert name of Settling Respondent] (collectively the "Parties").

EPA enters into this Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. [If the state is a party, insert "The State or _____, enters into this Agreement pursuant to [cite relevant state authority.]" and make appropriate reference to state with respect to affected provisions, including payment or work to be performed].

[Provide introductory information, consistent with Definitions and Statement of Facts, about the party purchasing the contaminated property including, name ("Settling Respondent"), address, corporate status if applicable and include proposed use of the property by prospective purchaser. Provide name, location and description of Site.]

The Parties agree to undertake all actions required by the

terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X [If this Agreement contains a separate section for Settling Respondent's reservations, add section number], the potential liability of the Settling Respondent for the Existing Contamination at the Property which would otherwise result from Settling Respondent becoming the owner of the property.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA (and the state) of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

2. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or

under the Site as of the effective date of this Agreement.

3. "Parties" shall mean EPA, [State of _____], and the Settling Respondent.

4. "Property" shall mean that portion of the Site which is described in Exhibit 1 of this Agreement.

5. "Settling Respondent" shall mean _____.

6. "Site" shall mean the [Superfund] Site, encompassing approximately _____ acres, located at [address or description of location] in [name of city, county, and State], and depicted generally on the map attached as Exhibit 2. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located [provide a more specific definition of the Site where possible; may also wish to include within Site description structures, USTs, etc].

7. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

8. [Include only those facts relating to the Site that are relevant to the covenant being provided the prospective purchaser. Avoid adding information that relates only to actions or parties that are outside of this Agreement.]

9. The Settling Respondent represents, and for the purposes of this Agreement EPA [and the state] relies on those representations, that Settling Respondent's involvement with the Property and the Site has been limited to the following: [Provide

facts of any involvement by Settling Respondent with the Site, for example performing an environmental audit, or if Settling Respondent has had no involvement with the Site so state.].

IV. PAYMENT

10. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein [and Removal of Lien in Section XXI herein if that is part of the consideration for the agreement], Settling Respondent agrees to pay to EPA the sum of \$_____, within ___ days of the effective date of this Agreement. [A separate section should be added if the consideration is work to be performed.] The Settling Respondent shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region, EPA Docket number, and Site/Spill ID#_____ [insert 4-digit no.; first 2 numbers represent Region, second 2 numbers are Region's Site ID no.], [DOJ case number_____, if applicable] and name and address of Settling Respondent. [insert Regional Superfund Lockbox address where payment should be sent]. Notice of payment shall be sent to those persons listed in Section XV (Notices and Submissions) and to EPA Region ___ Financial Management Officer [insert address].

11. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an

annual basis.

[____.] [WORK TO BE PERFORMED]

[Include this section and other appropriate provisions relating to performance of the work, such as financial assurance, agency approvals, reporting, etc., where work to be performed is the consideration for the Agreement.

____. Statement of Work attached as Exhibit 3.]

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

12. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA [and the state] its authorized officers, employees, representatives, and all other persons performing response actions under EPA [or state] oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to s er property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Site under federal [and state] law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

13. Within 30 days after the effective date of this Agreement, the Settling Respondent shall record a certified copy of this Agreement with the Recorder's Office [or Registry of Deeds or other appropriate office], _____ County, State of _____. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

14. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement [and where appropriate, Section ___ (Work to be Performed)].

VI. DUE CARE/COOPERATION

15. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with

the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

16. By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA [and the state] all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous

substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States [and the state] determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States [and the state] reserves all rights it [they] may have.

VIII. UNITED STATES' COVENANT NOT TO SUE¹

17. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), of this Agreement [if consideration for Agreement is work to be performed, insert, as appropriate, "and upon completion of the work specified in Section ___ (Work to Be Per to the satisfaction of EPA)], the United States [and the state] covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) [and state law cite] with respect to the Existing Contamination.

¹ Since the covenant not to sue is from the United States, Regions negotiating these Agreements should advise the Department of Justice of any other federal agency involved with the Site, or which may have a claim under CERCLA with respect to the Site and use best efforts to advise such federal agency of the proposed settlement.

IX. RESERVATION OF RIGHTS

18. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States [and the State] reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), Section XIV (Payment of Costs, [and, if appropriate, Section __ (Work to be Performed)]);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(g) liability for violations of local, State or federal law or regulations.

19. With respect to any claim or cause of action asserted by the United States [or the state], the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

20. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States [or the state] may have against any person, firm, corporation or other entity not a party to this Agreement.

21. Nothing in this Agreement is intended to limit the right of EPA [or the state] to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA [or the state] in exercising its authority under federal [or state] law. Settling Respondent acknowledges that it is purchasing property where response actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

22. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States [or the state], its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

23. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

24. This Agreement shall apply to and be binding upon the United States, [and the state], and shall apply to and be binding on the Settling Respondent, its officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

25. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA [and the state] in its sole discretion.

26. The Settling Respondent agrees to pay the reasonable costs incurred by EPA [and the state] to review any subsequent requests for consent to assign or transfer the Property.

27. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA [the state] and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue

in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA [and the state].

XII. DISCLAIMER

28. This Agreement in no way constitutes a finding by EPA [or the state] as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA [or the state] that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

29. The Settling Respondent agrees to retain and make available to EPA [and the state] all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA [and the state] of the location of such documents and shall provide EPA [and the state] with an opportunity to copy any documents at the expense of EPA [or the state]. [Where work is to be performed, consider providing for document retention for ten years or until completion of work to the satisfaction of EPA, whichever is longer.]

XIV. PAYMENT OF COSTS

30. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), [or Section -- (Work to be Performed)] of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States [and the state] to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

31. [Insert names, titles, and addresses of those to whom notices and submissions are due, specifying which submissions are required.]

XVI. EFFECTIVE DATE

32. The effective date of this Agreement shall be the date upon which EPA issues written notice to Settling Respondent that EPA [and the state] has fully executed the Agreement after review of and response to any public comments received.

XVII. ATTORNEY GENERAL APPROVAL

33. The Attorney General of the United States or her designee has issued prior written approval of the settlement embodied in this Agreement.

XVIII. TERMINATION

34. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XIX. CONTRIBUTION PROTECTION

35. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are [all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination].

36. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States [and the state] in writing no later than 60 days prior to the initiation of such suit or claim.

37. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States [and the state] within 10 days of service of the complaint on them.

XX. EXHIBITS

____38. Exhibit 1 shall mean the description of the Property which is the subject of this Agreement.

39. Exhibit 2 shall mean the map depicting the Site.

[--. Exhibit 3 shall mean the Statement of Work.]

XXI. REMOVAL OF LIEN

40. [Use this provision only when appropriate.] Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment) [or upon satisfactory completion of work to be _____med specified in Section __ (Work to be Performed)], EPA agrees to remove any lien it may have on the Property under Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), as a result of response action conducted by EPA at the Property.

XXII. PUBLIC COMMENT

41. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Regional Administrator, Region ___ Date

IT IS SO AGREED:

BY:

Name Date

PETER G. TORKILSEN, MASSACHUSETTS
CHAIRMAN

GLENN POSHARD, ILLINOIS
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

104th Congress

Committee on Small Business

Subcommittee on Government Programs

B-365 Rayburn House Office Building

Washington, DC 20515

June 28, 1996

Mr. Thomas E. Kelly
Director, Office of Regulatory Management and Evaluation
Office of Policy, Planning, and Evaluation
Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Dear Tom:

Thank you for coming to speak before the Subcommittee on Government Programs regarding the Environmental Protection Agency's compliance with the Paperwork Reduction Act of 1995. Your testimony was very informative and I commend you on your efforts to reduce the burden of paperwork on small business.

Because of time constraints, the Subcommittee was unable to ask all prepared questions. I have listed below some additional questions from members of the Committee and appreciate you taking the time to answer them in writing. Your responses will be printed with your testimony and written statement in the official hearing report.

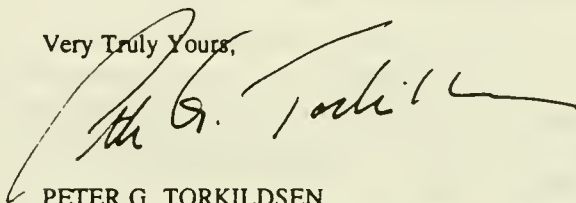
- 1.) According to a memo written by the non-partisan Congressional Research Service, Section 304 of the Clean Water Act states that the EPA, "issues water quality criteria based on the latest scientific information available ... Section 304(a) criteria are published as guidance documents and have no force of law." What is typically the difference between the published criteria and the environmental standards which are eventually set? What is the rationale for any major differences between the two? If standards are set on a case by case basis, please include examples of reasons given for disparity from published criteria. Do states have to abide by EPA standards? Do they use the EPA's criteria when setting their own standards?
- 2.) The General Accounting Office (GAO) reported that the total number of paperwork burden hours increased from 81 million on January 1, 1995 to 105 million on December 31, 1995, just prior to the establishment of the EPA paperwork reduction

program. Yet, EPA claims to have reduced the burden hours by 25 percent. Wouldn't a 25 percent decrease merely bring the EPA back to its January 1, 1995 level?

- 3.) Again, the GAO reports that the burden hours for the solid waste hazardous waste manifest jumped from 435,000 hours on January 1, 1995 to 3.2 million hours just immediately before a 500,000 burden hour reduction was claimed. Why?
- 4.) EPA claims to have reduced 1.6 million burden hour reduction for land disposal restrictions, yet the GAO reports that the total burden hours for this program on January 1, 1995 was 755,000 hours. How can this happen?
- 5.) EPA claims to have reduced 1.2 million burden hours by eliminating Form R dealing with toxic release disclosure. But EPA added a self-certification program which added 800,000 burden hours, according to the GAO. Please explain why the burden reduction claimed was not just 400,000 hours.

Once again, I thank you for taking the time to come and speak before the subcommittee. I look forward to your response.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Peter G. Torkildsen", written over a large, light-colored scribble or watermark.

PETER G. TORKILDSEN
Chairman
Subcommittee on Government Programs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 14 1996

OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

The Honorable Peter G. Torkildsen
Chairman, Subcommittee on Government Programs
Committee on Small Business
U. S. House of Representatives
Washington, D.C. 20515

Dear Chairman Torkildsen:

I am responding to your letter of June 28, 1996 on behalf of Administrator Browner and Thomas E. Kelly who testified before your Subcommittee on May 30 of this year. The Agency welcomes the opportunity to further explain our efforts to comply with the Paperwork Reduction Act and I have enclosed answers to the questions posed to the Environmental Protection Agency following the hearing on the Agency's compliance with the Paperwork Reduction Act.

Thank you for allowing Mr. Kelly the opportunity to present testimony at your May 30 hearing. Mr. Kelly enjoyed commenting on progress the Agency has made in complying with the Paperwork Reduction Act and explaining many of the programs underway that are designed to protect human health and the environment while recognizing circumstances particular to small business.

The Office of Management and Budget has reviewed our response and has no objection to its submission. If I may provide you or Committee staff with any further information, please don't hesitate to call Tom Sullivan of my office at (202)260-5199.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Hickmott".

Robert W. Hickmott
Associate Administrator

enclosure

**HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON GOVERNMENT PROGRAMS
ADDITIONAL QUESTIONS SUBMITTED BY THE COMMITTEE
FOLLOWING**

**MAY 30, 1996 HEARING ON EPA'S COMPLIANCE WITH THE PAPERWORK
REDUCTION ACT**

**AGENCY WITNESS - THOMAS E. KELLY, DIRECTOR, OFFICE OF REGULATORY
MANAGEMENT AND EVALUATION, OFFICE OF POLICY, PLANNING AND
EVALUATION**

- 1.) Q: *According to a memo written by the non-partisan Congressional Research Service, Section 304 of the Clean Water Act states that the EPA, "issues water quality criteria based on the latest scientific information available... Section 304(a) criteria are published as guidance documents and have no force of law." What is typically the difference between the published criteria and the environmental standards which are eventually set? What is the rationale for any major differences between the two? If standards are set on a case by case basis, please include examples of reasons given for disparity from published criteria. Do states have to abide by EP standards? Do they use the EPA's criteria when setting their own standards.*
- A: The Environmental Protection Agency publishes Section 304(a) water quality criteria as the Agency's best recommendation of the effects of pollutants on "... on the health and welfare... to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water..." [Clean Water Act, Section 304(a)(1)]. The Clean Water Act, in Section 303(c), requires States to adopt all of the criteria into their State standards necessary to protect the designated uses established by the State. When the State has adopted the criteria as statute or regulation, the criteria have the force of law and must be met by dischargers. See Clean Water Act section 301(b)(1)(C).

Under the water quality standards regulation, the States may adopt: numeric criteria using EPA's section 304(a) guidance, EPA's section 304(a) guidance modified to reflect site-specific conditions, or by the application of other scientifically defensible methods; and narrative criteria where numeric criteria cannot be established or as a supplement numeric criteria. The EPA then must review the State's criteria for technical defensibility unless the State's criteria are equal to or more stringent than the Agency's Section 304(a) criteria guidance. Thus, the legally enforceable water quality criteria may differ from State to State (and even among waters within a State since States may adopt unique criteria for different water bodies). However, most States adopt EPA's recommended criteria to avoid the costs of having to develop and defend their own. Examples of why human health criteria differ among various waters include the assumption of different fish and water consumption rates and different cancer risk levels. Aquatic life criteria can differ due to variability of water constituents like hardness or pH which affect bioavailability, or in some cases the presence or absence of sensitive species in particular ambient waters.

2.) Q: *The General Accounting Office (GAO) reported that the total number of paperwork burden hours increased from 81 million on January 1, 1995 to 105 million on December 31, 1995, just prior to the establishment of the EPA paperwork reduction program. Yet, EPA claims to have reduced the burden hours by 25 percent. Wouldn't a 25 percent decrease merely bring the EPA back to its January 1, 1995 level?*

A: In the March 16, 1995 *Reinventing Environmental Regulation* report, EPA set a goal of reducing by 25 percent the burden associated with the requirements in effect on January 1, 1995. EPA originally estimated the baseline burden to be 81 million hours. However, as EPA developed better information about the actual paperwork the baseline represented, we made several adjustments to the original baseline estimate, so that 100 million hours better reflects the burden accountable under the Paperwork Reduction Act for requirements in effect at that time. At the same time we also adjusted the 25% reduction goal from 20 million hours to 25 million hours.

EPA has identified 15 million hours of burden in the 1995 baseline that are not contained in the current 1996 baseline; this includes 12 million hours from requirements changed or deleted, and 3 million hours from requirements completed or expired. EPA has proposed rules or identified other near-term actions for an additional 8 million hours; this will include 4.5 million hours from requirements changed or deleted, and 3.5 million hours from requirements completed or expired. Work is continuing on other collections, and we anticipate this work will soon lead to further reductions toward the goal.

EPA chose to reduce the burden in effect on January 1, 1995, because that represented the body of existing requirements that could serve as a target for reduction. However, as GAO indicated, new statutory provisions, requiring both recalculations and additional collections, will have the overall effect of keeping EPA's total burden hours accountable under the Paperwork Reduction Act at or above the 100 million hours level, at least in the near term. Without EPA's Burden Reduction effort, however, the current total would be considerably higher.

A large part of the increase, approximately 9 million hours, is due to a change in the definition of burden contained in the Paperwork Reduction Act of 1995. This change required the Agency to count and obtain OMB clearance for "third party" exchange of information under EPA regulations. Other increases are due to statutory requirements such as the Clean Air Act of 1990 and the Residential Lead-Based Paint Hazard Reduction Act of 1992. Residential lead requirements have added more than 7 million hours of burden so far this year. Even in the cases of added paperwork requirements, EPA has carefully attempted to meet its statutory obligations to both protect the environment and limit public paperwork burden to the minimum necessary.

3.) Q: *Again, the GAO reports that the burden hours for the solid waste hazardous waste manifest jumped from 435,000 hours on January 1, 1995 to 3.2 million hours just immediately before a 500,000 burden hour reduction was claimed. Why?*

A: The numbers cited for the hazardous waste manifest are based on draft materials employing rough estimates. Although we were concerned about the potential for inaccuracy, EPA acceded to GAO's request that we share these materials with them in February 1996. Unfortunately the estimates for the hazardous waste manifest are incorrect. EPA is currently investigating several options for reducing hazardous waste manifest burden, but we cannot yet include any completed or proposed burden reductions for this collection toward our 25% burden reduction target. EPA is also developing an improved estimate of the burden for this collection in conjunction with renewal of OMB clearance, scheduled in September 1996.

4.) Q: *EPA claims to have reduced 1.6 million burden hour reduction for land disposal reductions, yet the GAO reports that the total burden hours for this program on January, 1995 was 755,000 hours? How can this happen?*

A: The numbers cited for the land disposal restrictions are based on the rough estimates which EPA shared with GAO in February 1996. Under EPA's close examination of this collection as part of the burden reduction effort, it became apparent that the baseline estimate was not representative of the true burden associated with the underlying requirements. Therefore, EPA adjusted the original baseline number to reflect the actual burden from this collection before applying the reduction fairly associated with reinvention of the land disposal regulations.

For the land disposal restrictions for hazardous waste, EPA has increased the baseline from 755,000 hours to 5,060,00 hours. This reflects newly derived information that the reporting requirements apply to a universe of 225,000 generators rather than the 40,000 previously estimated. EPA estimates savings of 1,600,000 hours from this revised baseline, based on the effect of rules proposed in August and December 1995. This is now counted as a "proposed" reduction. It will be counted as a completed reduction when the rules become final.

5.) Q: *EPA claims to have reduced 1.2 million burden hours by eliminating form R dealing with toxic release disclosure. But EPA added a self-certification program which added 800,000 burden hours, according to the GAO. Please explain why the burden reduction claimed was not just 400,000 hours.*

A: Again, the numbers cited for the Toxic Release Inventory are based upon preliminary numbers EPA shared with GAO in February 1996. For burden associated with the Toxic Release Inventory, EPA has completed reductions of 969,000 hours to date, and has proposed actions which will result in reductions of an additional 159,000 hours. Therefore, the total reduction associated with TRI will be approximately 1.1 million hours. This includes net savings of 408,000 hours associated with the self-certification form (comparable to the net savings described in your question), plus separate savings of 561,000 hours associated with five 1995 listing amendments, and 159,000 hours from a 1996 Hydrochloric Acid Delisting. See the attached table for details of these actions and reductions.

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